STATEMENT OF THE CASE AND FACTS

a) The Kentucky Case.

The Kentucky case arises out of a written option contract between the Respondent Godley and the Petitioner for the latter to purchase all of the corporate stock of Godley, Inc., a Kentucky corporation, all of whose stock was owned by Respondent Godley, and thereby acquire title to approximately 24,700 acres of land in Knott, Perry and Breathitt Counties in Kentucky.

An earlier United States District Court case had held in a *trespass* case (emphasis added) that the title to the acreage was void because of an inability to locate the property on the ground by survey. Based thereupon, in that case, *Berry et al. v. Cyprus Coal, et al.*, an unpublished decision No. 84-53 (E.D. Ky. March 20, 1992), the cross-claim of Respondent Godley and her husband, now deceased, for damages for the appropriation of the minerals on the property was dismissed by summary judgment.

Information of this case, however, was not immediately communicated to the Petitioner by the Respondents during the 30 day option period because it did not arise out of a *quiet title* action, but a *trespass* action, and a still earlier Kentucky federal case tried in the Pikeville Division had quieted title in favor of the Godleys, *Godley v. Piedmont Land Sales, Inc. et al.*, 505 F. Supp. 387 (1978) and 640 F.2d 831 (6th Cir. 1981). The Respondents' contention, therefore, was that it did not affect the *title* to the acreage. It was also the contention of the Respondents that upon obtaining a current boundary survey (already being prepared) the property boundaries could be established on the ground. The District Court, however, in that case, held otherwise in declaring the title void and the

case was ultimately appealed to the Sixth Circuit Court of Appeals where it was affirmed under a *per curiam* decision.

The Petitioner, during the 30 day option period, had decided against the exercise of the option after he learned of the earlier decision and *per* the option contract forfeited his $15,000.00 option payment to Respondent Godley per the terms of the option agreement.

The Petitioner then claimed damages, allegedly incurred by him during the 30 day period prior to his right to exercise the option, and he instituted his *pro se* Complaint in Kentucky, Civil Case No. 94-111 in Pikeville, against the Respondents and alleged three counts: Count I, a violation of the Racketeering, Influence of Corrupt Organizations Act of 1970 ("RICO"), 18 U.S.C. § 1960 and conspiracy to violate 18 U.S.C. § 1962(a)(c) made actionable by 18 U.S.C. § 1994; and Count II, a Kentucky common law claim for intentional misrepresentation with respect to the title and the effect it had on the *Cyprus* litigation; and Count III, a claim that misrepresentation induced Petitioner to enter into a contractual relationship in reliance thereon.

Thereafter, on 13 August 1997 the Magistrate Judge recommended that the District Court enter judgment in favor of the Petitioner on Motion of the Petitioner on the issue of Respondents' liability on Counts II and III as a sanction for Respondents' alleged violation of certain discovery procedures and the District Court then entered a default judgment on these Counts, denied the Respondents a jury trial and the case was set for trial or hearing on damages before the Magistrate Judge for April 29 through 30, 1998 at Pikeville.

Even so, after that trial, the Magistrate Judge, in applying Kentucky law, denied Petitioner punitive damages and awarded the Petitioner only the sum of $16,000.00 which was the amount actually agreed to be paid the Petitioner by the Respondents, representing a return of the option amount of $15,000.00 plus a $1,000.00 refund amount the Petitioner testified represented his payment of attorney's fees.

In her Report and Recommendation to the District Court dated 3 March 2000 after the trial, as to punitive damages, the Magistrate Judge held:

> "Punitive damages may be awarded for conduct that is outrageous, because of the Defendant's evil motive or his reckless indifference to the rights of others . . . the question is whether the Defendant's misconduct has the character of outrage. . . . Punitive damages are warranted only where the Defendant has acted wantonly, or recklessly, or oppressively, or with malice as implies a spirit of mischief or criminal indifference to the civil litigation . . .
>
> . . . Plaintiff is not entitled to an award of punitive damages. . . . To be entitled to an award of such damages, Plaintiff must prove that Defendant's conduct was so outrageous that it constitutes evil motive or reckless indifference to the rights of others.
>
> . . . By even the most liberal standard of a preponderance of evidence, and with the further liability to which a *pro se* Plaintiff is entitled, Plaintiff failed to submit any additional evidence, much less did he otherwise exhibit, that Defendants' actions albeit fraudulent, also amount to outrageous conduct. This lack of proof on the

> issue requires that the . . . claim for punitive damages be denied." App. 2.

This Report and Recommendation was submitted to the District Court for entry of a judgment but the District Court judge, without further hearing, despite the fact that he never heard any of the testimony, or ever met any of the parties or witnesses, or ever heard any of the testimony of any party or witness, and who never ruled on or considered any of the objections at the trial, as requested by the Magistrate Judge, failed to accept the Recommendation of the Magistrate Judge who heard the case, and entered judgment against the Respondents for compensatory damages in the amount of $111,200.53 and for punitive damages in the amount of $500,000.00. Then, in an opinion not recommended for publication, the Sixth Circuit Court of Appeals affirmed the District Court judgment.

This was the holding despite the fact that at trial, the Respondents offered into evidence the metes and bounds described Deed, a written title opinion tracing the title to Respondent Godley, a title insurance policy with certain exceptions, including the reference or exception as to the earlier *Bessie Berry* case, *supra.*, an IRS certification of the Indian Foundation as a charitable institution and to which the property was ultimately sold with knowledge of the said *Berry* exception, a copy of the Option Agreement with the Indian Foundation indicating the *Berry* exception; a current boundary survey of a Kentucky engineer and surveyor which located the property in accord with the metes and bounds Deed. App. 2.

As to punitive damages, the District Court referenced essentially five findings to support its award of punitive damage; to wit,

(1) Violations of discovery orders on which the Sixth Circuit Court expressed *no* opinion.

(2) Also, the North Carolina Bar rules of professional conduct, exhibit Number 105 as referenced in the Court's opinion, is an exhibit which " . . . Plaintiff has provided the Court with a copy of the Revised Rules of Professional Conduct for the North Carolina Bar. . . . " This is literally true but it was not even introduced at trial and the quoted rules on their face were not even in effect at the time of the trial, and further on their face it provided that none of such rules could form the basis of civil liability. Essentially, a copy of the rules was provided or handed to the Court after the trial, *ex parte*, with no notice to the Respondents and without further hearing.

(3) As to any misrepresentations of the status of the title, such statements were given in the context of an opinion that the *Bessie Berry* case did not affect the title for the reasons expressed that the latter case arose in the context of a trespass action and not a quiet title action and all such statements were made during the 30 day period extended to Petitioner to sign the option contract and the *Bessie Berry* case was discussed extensively during that period with the Petitioner and his representatives.

(4) As to the "attempt" to sell the property to a nonprofit foundation on September 3, 1993, as a reason to award punitive damages, this was, in fact, a sale to the Indian Foundation under a provision disclosing the existence of the *Bessie Berry* case – in other words, with express notice of such as evidenced by that option agreement with the

Indian Foundation and the Affidavit of one Samuel Grigsby, associated with the Indian Foundation.

(5) As to the alleged attempts to sell the property to a Dr. Harber and to the Wolford brothers, there was absolutely no evidence to support such a finding.

b) The North Carolina Enforcement Case.

This North Carolina case, 03-CVS-16356, was filed in the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina by the Petitioner against the Respondents to seek enforcement in North Carolina of the aforesaid Kentucky judgment. It was filed 23 September 2003 pursuant to North Carolina Enforcement of Foreign Judgment Act, G.S. 1C-1701 *et seq.*

It came on for trial on 12 December 2003 as a non-jury matter and the transcript of the trial numbers 48 pages and is identified in the Appendix as Trial Transcript although not included as an exhibit. No oral or deposition testimony was offered at trial; however, as heretofore referenced, the Affidavit of one of the Respondents, Julius Jennings Wade, Jr., was a part of the record and is noted as App. 2.

That trial resulted in the entry of an order dated 12 December 2003 of the Honorable Marvin K. Gray, Superior Court Judge Presiding, denying the enforcement of the Kentucky judgment in North Carolina because, among other reasons, it violated the public policy of North Carolina and, thus, was unenforceable in North Carolina. App. 1.

The procedural history of that case, both at the trial and at the Appellate level, is set forth in the section of this Brief as one of the *Opinions Below*.

At the outset, a few comments about Petitioner's Brief:

Petitioner described in his Brief, p. 5, a " . . . fabricated . . . dishonest, deceitful proposed order that intentionally corrupted and grossly misrepresented Judge Gray's actual ruling " . . . alleging it was intended to deny Petitioner a fair appeal and justice and to defraud and deceive the appellate courts . . . " He brings this to the attention of the Respondent Godley's counsel by his e-mail of 11 December 2000; to wit, " . . . I am in receipt of your proposed Order to Judge Gray and would suggest but one paragraph, being the fifth one at page two, . . . I would want this paragraph removed from the order for several reasons . . . consequently, I would urge you to simply delete the paragraph (to which objected) and submit the proposed order in that fashion." This suggestion was precisely followed and on 12 December 2003 a hand delivered letter was delivered to Judge Gray by counsel for Respondent Godley enclosing the original proposed order of the Respondents and a second proposed order as suggested by the Petitioner deleting the provision suggested by the Petitioner. Judge Gray was advised by Respondent Godley to enter the order which Judge Gray deemed appropriate. He then entered the Order agreed upon by the parties and as suggested by the Petitioner in his e-mail. Nevertheless, this agreed upon order is, strangely enough, the order described by Petitioner as being intentionally corrupted, grossly misrepresented, fabricated, dishonest and deceitful, even though agreed upon.

Additionally, Petitioner continues to describe on pages 8 and 9 of his Brief his petitions to the North Carolina Court of Appeals and the North Carolina Supreme Court as documenting the repeated intentional violations of the Appellate Rulings by Judge Gray and the defense lawyers' flagrant corruption of Judge Gray's ruling, their deceitful proposed order ploy and their blatant lying to, and *ex parte* discussions with, the North Carolina Superior Court Judges.

On page 22 of his Brief Petitioner suggests that " . . . since the *pro se* Plaintiff is only a farmer he must rely on the Court to know and to apply the proper case law and authority, even if the Plaintiff had failed to present or argue that Authority . . . " and cites the Sixth Circuit case of *Boswell v. Mayer*, 169 F.3d 384, 387 (1999) in support of that principle; whereas in this North Carolina enforcement case, the forum State, the relevant law is as set forth in *Bledsoe v. County*, 135 N.C. App. 124, 519 S.E.2d 316 (1999) where the plaintiff appealed from summary judgment in favor of the defendants and when plaintiff failed to comply with a number of the appellate rules. In that case the Court held: "The Rules of Appellate Procedure are mandatory; failure to comply with the rules subjects an appeal to dismissal . . . Furthermore, these rules apply to everyone . . . Whether acting *pro se* or being represented by all of the five largest law firms in the State. Because plaintiff violated many of the appellate rules, his appeal must be dismissed, notwithstanding his *pro se* status."

Further, in his Brief he describes, without any factual foundation, Judge Gray's conduct as draconian bias and prejudice against the *pro se* Petitioner and as intentional misconduct in using his clerk to contact and deceive the Petitioner.

The Petitioner's Brief and supporting documents as evidenced by the Appendix contain instance after instance of further vilification of the Courts and of Respondents' counsel for simply doing their job; including such descriptions as deceitful, obviously fabricated, dishonest, sleazy, corrupted, gross misrepresentations, devious, blatant misrepresentation, fraudulent, mean spirited, reprehensible, underhanded manipulation, subversive, rogue lawyers, scoundrel lawyers, and similar descriptive phrases, while at the same time, while indulging in self adulation, he describes himself as " . . . an honest and truthful Scotsman . . . raised that way, always will be. I have a reputation for being with all the people I do business with. I am absolutely honest and truthful." Trial Transcript, p. 42.

Finally, at this point, it becomes essential and necessary to comment upon portions of the first paragraph of the section of Petitioner's Petition under the heading entitled *Statement of the Case and Facts*. Brief of Petitioner, page 2.

Except as to one portion referenced hereafter, that statement is cowardly, dishonest, unprofessional, unethical and undocumented and is maliciously set forth in order to attract the attention of the Court and no portion of it can be established or proven by any truthful and credible evidence, nor has it been, except that the Respondents Wade, in making various mistakes, were appropriately disbarred for mishandling certain clients' funds in matters unrelated to any matter involving the Petitioner. The funds in question were immediately restored, even before any Bar proceedings were commenced. The deferred and suspended criminal sanctions were fully satisfied. Both Respondents have the right to reapply for readmission to the Bar.

Insofar as Respondent Mrs. Godley is concerned, she is a lady of advanced age of impeccable character and reputation. The record indicates she did nothing to or against the Petitioner except sign the Option agreement and such other matters and things as suggested by the Respondents Wade. The suggestion that Respondent Mrs. Godley is a " . . . controlling operative of an interstate network of notorious criminals . . . " is a shameful and cowardly assertion against a defenseless lady and there is no truth, nor is any documented by Petitioner, of the assertion that any of the Respondents "looted" or stole anything. What it is alleged that U.S. Attorney Guy Blackwell said is impossible to defend against because he is not known by any of the Respondents nor with whom any Respondent has had any contact whatsoever. Nor is there any showing of the identification of any " . . . network members . . . " who are in federal prisons and associated in any way with any of the Respondents.

In this same vein, in further defense of the Respondents Wade, it is a matter of published information by reference to the Law Directory published by Martindale-Hubbell published the last year of the practice of each of the Respondents Wade, respectively years 1994 and 2001, that Respondent Julius Jennings Wade, Jr. during his many years of practice earned an AV peer review rating, was a past member of all of the relevant state and federal Bars involving North Carolina, and, as well, the Bar of this Court. He was also a past president of the Mecklenburg County Bar and a member of the Board of Editors of the Law Review, as indicated in the publications of that publication, of the Law School of the University of North Carolina from which he graduated with academic honors in 1956.

As to Respondent James H. Wade, he is a graduate of Campbell University and its Law School. He was a member of the award winning Moot Court team there and upon his graduation he was for a period of two years the Law Clerk to the Senior federal court Judge of the United States District Court for the Western District of North Carolina, the late Honorable Woodrow W. Jones. At the last year of his practice he was peer rated BV, the highest rating he could receive at that year of his practice and he, too was a member of all of the relevant state and federal Bars involving North Carolina except the Bar of this Court.

Finally, in relation to the charge by the Petitioner of the Respondents being the "controlling operatives of the interstate network of notorious criminals . . . " it is pointed out that the District Court in the Kentucky case number 94-111, dismissed by summary judgment on 8 May 1997 Count I which charged a violation of the Racketeering, Influence of Corrupt Organizations Act of 1970, the so-called "RICO" act, 18 U.S.C. § 1960 and a conspiracy to violate 18 U.S.C. § 1962(a)-(c) made actionable by 18 U.S.C. § 1994. In other words there was not a scintilla of evidence to support that serious charge involving those matters referenced in Petitioner's Brief.

ARGUMENT

Petitioner's Motion in this North Carolina enforcement case, 03-CVS-16356, is filed under the *Uniform Enforcement of Foreign Judgment Act*, N.C.G.S. 1C-1701, *et seq.* which provides, in relevant parts, that:

a. " . . . the Rules of Civil Procedure shall apply";

b. "The judgment creditor shall have the burden of proving that the foreign judgment is entitled to full faith and credit";

c. G.S. 1C-1708 provides that the " . . . provisions of this Act shall not apply to foreign judgments based on claims which are contrary to the *public policies of North Carolina*" (emphasis added);

d. The Petitioner seeks enforcement of this foreign judgment which provides for punitive damages *in excess* of the express limitations of punitive damages as provided by G.S. 1D-25 which by statute shall not exceed three times the amount of compensatory damages or two hundred fifty thousand dollars ($250,000.00), whichever is greater;

e. G.S. 1D-25 was effective 1 January 1996, well prior to the filing of this action on September 23, 2003, and well prior to the *Revised Memorandum Opinion and Order* of the Kentucky Federal District Court and well prior to the adjudication of the acts giving rise to the award of punitive damages by the District Court and well prior to the affirmation by the United States Court of Appeals for the Sixth Circuit;

f. G.S. 1C-1703, subsection (a) provides that "judgment so filed has the same effect and *is subject to the same defenses* as a judgment of this State" (emphasis added);

g. Such a judgment is automatically stayed without security, until the Courts finally dispose of the matter;

h. G.S. 1C-1705 provides that the judgment debtor may file a motion for relief from, or notice of defense to, the foreign judgment on any other ground for relief as from a judgment of this State.

Article IV, Section 1 and 28 U.S.C. § 1738 provides that " . . . Full Faith and Credit shall be given in each State to the Public Acts, Records and Judicial Proceedings of every other State."

Under North Carolina conflict of laws rules substantive rights are determined by the law of the situs (lex loci) and remedial or procedural rights are determined by the law of the forum (lex fori), in this case the law of North Carolina, in this enforcement action. The damage issue is, therefore, governed by the law of North Carolina in this separate and free standing action. See *Clayton v. Burnett*, 135 N.C. App. 746, 522 S.E.2d 785 (1999).

In *Howland v. Stitzer*, 231 N.C. 528, 58 S.E.2d 104 (1950) the North Carolina Supreme Court holds that a judgment of a sister state may be collaterally attacked upon the ground that it is against public policy. *White v. Graham*, 72 N.C. App. 436, 325 S.E.2d 493 (1985) holds that " . . . North Carolina Courts may entertain attacks on foreign judgments on the grounds of . . . public policy decisions." Further, *Courtney v. Courtney*, 40 N.C. App. 291, 253 S.E.2d 2 (1979) holds that full faith and credit is to be given to a judgment of a court of another state under the provisions of Article IV, Section 1 of the United States Constitution but holds further, however, that such a judgment may be attacked in North Carolina as being against North Carolina public policy. *Webster v. Webster*, 75 N.C. App. 621 331 S.E.2d 276 (1985), holds that full faith and credit shall be given in each State to the judicial

proceedings of every other State, citing U.S. Constitution, Article IV, Section 1, holding further, however that " . . . a judgment of another State may be attacked in this State . . . on grounds of public policy . . . " Thus, in *Reinwood v. Swiggart*, 107 N.C. App. 590, 421 S.E.2d 367 (1992) the Court held that a judgment of another State may be attacked in this State on grounds of fraud, public policy, or lack of jurisdiction. Finally, in *In re Chase*, 195 N.C. 143, 141 S.E. 471 (1923) our Supreme Court states: " . . . and as pointed out in *RR. v. Babcock*, 154 U.S. 190 . . . to justify a court in refusing to enforce a right which accrued under the law of another state, because against the public policy of our laws, it must appear that it is against good morals or natural justice, or that for some other reason the enforcement of it would be prejudicial to the *general interests of our citizens* . . . And this is a matter which each state must *decide for itself*." (emphasis added.)

In *Lockman v. Lockman*, 220 N.C. 95, 16 S.E.2d 670 (1941), the North Carolina Supreme Court states: "The North Carolina Statutes prohibiting gambling in futures and denying jurisdiction of the courts to suits on judgments based upon such contracts have been upheld as constituting an exception to the application of the Full Faith and Credit Claims, on the ground that the State had not provided a court with jurisdiction to entertain suit and a judgment though properly rendered in another State."

The United States Supreme Court in *Bradford Electric v. Clapper*, 286 U.S. 145 (1932) draws a distinction with respect to whether the full faith and credit clause requires the enforcement of a right confirmed by a statute of another state, between a case where the right is sought to be affirmatively enforced and a case where it is set up

mainly as a defense, taking the view that while in the former case, in the event of conflicting policies, the enforcement of the right may be declined while in the latter case refusal to recognize the right subjects the defendant to an irremediable liability which must be avoided. It held

> "[I]t is true that the full faith and credit clause does not require the enforcement of every right conferred by a statute of another state. There is room for some play of conflicting policies. Thus, a plaintiff suing in New Hampshire on a statutory cause of action arising in Vermont might be denied relief because the forum fails to provide a court with jurisdiction of the controversy . . . or because it fails to provide procedures appropriate to its determination . . . or because the enforcement of the right conferred would be obnoxious to the public policy of its forum . . . But the company (the employer) is in a position different from that of a plaintiff who seeks to enforce a cause of action conferred by the laws of another state. The right which it claims should be given effect is set up by way of defense to an asserted liability; and to a defense different considerations apply . . . A state may, on occasion, decline to enforce a foreign cause of action. In so doing it merely denies a remedy, leaving unimpaired the plaintiff's substantive right, so that he is free to enforce it elsewhere."

Also, the Restatement of the Law, Second, Conflicts of Laws 2d; Section 103 entitled Limitations of Full Faith and Credit provides:

> "A judgment rendered in one State or the United States need not be recognized or enforced in a sister state if such a recognition of enforcement is not required by the national policy of full faith

> and credit because it would involve an improper interference with important interests of the sister state."

A recent decision of this Court is *Baker v. General Motors*, 522 U.S. 222 (1998) and this Court made a distinction between the judgments and the statutes of the several states regarding the full faith and credit owed, in stating:

> "Our precedent differentiates the credit owed to laws (legislative measures and common law) and to judgments. In numerous cases this Court has held that credit must be given to the judgment of another state although the forum would not be required to entertain the suit on which the judgment was founded. The Full Faith and Credit Clause does not compel 'a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate . . . Full faith and credit does not mean that States must adopt the practices of other States regarding the time, manner and mechanism for enforcing judgments. Enforcement measures do not travel with the sister state judgment as preclusive effects do; said measures remain subject to the even-handed control of forum law . . . judgment may be enforced only as laws (of enforcing forum) may permit . . . the local law of the forum determines the methods by which a judgment of another state is enforced.'"

Consequently, this Kentucky judgment under the federal Constitution may be enforced as the laws of North Carolina, the forum state, may permit in accord with the public policy provisions of G.S. 1C-1708 and in accord with the punitive damage caps of the provisions of G.S. 1D-25

and these laws do not permit the enforcement of the Kentucky judgment to the contrary.

In summary:

This proceeding is filed as a separate, free-standing enforcement proceeding in this court which becomes, and is, the forum court where the remedial and procedural rights of enforcement are determined by the law of the forum, which, in this case, is the law of North Carolina. It is abundantly clear that in such an enforcement action the defending parties are entitled to defend, as citizens of this state, their property rights as arise out of the judgment as entered in a sister state based upon public policy considerations as are established by the forum state, North Carolina. Based upon the express wording of N.C.G.S. 1C-1708 the enforcement provisions of the act do not apply to judgments based upon claims which are contrary to the public policies of North Carolina. To this legislative pronouncement of the public policy of North Carolina, all of the case law of this State is in agreement. This State has a right as a sovereign state to legislate its own laws and to develop case law as it chooses so long as it does not offend the Full Faith and Credit Clause of the U.S. Constitution. Here there is no affront to the Constitution. This is not simply a matter of suing "on a judgment." This involves the public policy consideration of putting a cap on punitive damages in accordance with N.C.G.S. 1D-25 which involves a remedial and procedural right and which public policy consideration is guaranteed to be protected by the same Full Faith and Credit Clause of the Constitution. In other words, the Full Faith and Credit Clause protects the forum state's application of these legislative and case law considerations of public policy regarding punitive damages which exist to protect the citizens of our state. North

Carolina is not required to entertain a collection effort for an amount in violation of our statutory provisions.

In any event, the Petitioner is required under the North Carolina Rules of Appellate Procedure to properly follow the procedures set forth therein in pursuing any appeal, whether it is based on alleged violations of constitutional principles, or otherwise. This the Petitioner has failed to do.

The appellate history of this enforcement case is set forth in the section of this Brief entitled *Opinions Below* and the various orders of the Superior Court, the North Carolina Court of Appeals and the North Carolina Supreme Court are referenced in the Appendix. As appears, the final step in the appellate process is dated 6 April 2005 and is the final order of the North Carolina Supreme Court's denial of the Petitioner's Petition for a Writ of Certiorari to review the 12 December 2003 Order of the Supreme Court denying the Petitioner's request to enforce the Kentucky judgment in North Carolina.

As the Appendix indicates, a proposed record was served by Petitioner on the Respondents on 17 February 2004. Then Respondent Godley and Respondents Wade timely filed proposed objections and amendments and an alternative record.

On 12 March 2004 the Petitioner requested judicial settlement and then on 26 March 2004 the Petitioner advised that the presiding judge could not settle the record and noticed a hearing for settlement for 4 May 2004 before the presiding judge in Courtroom 307 in violation of Rule 11(c).

The hearing was held on 4 May 2004 before The Honorable Richard D. Boner who had not heard the case and who as the presiding judge in Courtroom 307. This was in violation of Rule 11(c).

Notwithstanding, an order settling the record was thereafter signed on 12 May 2004 by Judge Boner and ultimately the Record on Appeal was docketed with the Clerk of the Court of Appeals on 24 May 2004.

Pursuant to Rule 11(c) the proposed record was not timely filed and the Order of the Court of Appeals should be affirmed for the following Rules violations:

(a) Rule 11(c), in part, provides that upon the timely service by the Petitioner of a proposed record, the Respondents may serve all parties with amendments and objections to the proposed record, or an alternative record, within 10 days. Then, the Petitioner may in writing request the judge from whose judgment was taken to settle the record and serve the same on all parties. That judge shall send written notice setting a time and place for the hearing which shall be held no later than fifteen (15) days. The judge shall then settle the record by order entered no more than twenty (20) days after service of the request. This Rule was violated by setting the hearing before Judge Boner.

(b) Rule 27(c) clearly provides for extensions of time to abide by the Rules. This Rule was not followed.

(c) Rule 36(b) clearly mandates that when the authority to enter an order or take other judicial action is limited to a particular judge, as in this case, and the judge is unavailable, as in this case, the Chief Justice of this

Court will, upon Motion of any party designate another judge to act. This rule was not followed.

(d) Here, Petitioner's actions not only violated Rule 11(c) by not obtaining judicial settlement of the record within the prescribed period, he, in addition, did not docket this record until 24 May 2004 thus violating Rule 12 by late docketing of the record by filing it after it was due.

(e) In addition to this, Petitioner immediately became aware of the unavailability of the proper judge to settle the record and that he did not comply with the Rules which are abundantly clear as to securing additional time from the court to do so, yet he neither sought nor obtained an extension of time to obtain settlement of the record in accordance with Rule 11. He also violated Rule 36(c) which provides the method of appointment of another judge for such settlement.

Rule 25, entitled *Penalties for Failure to Comply with Rules*, provides, in part, that if, after giving Notice of Appeal from any court, the appellant shall fail within the time allowed, to take any action required to present the appeal for decision, the appeal may on motion be dismissed. After an appeal has been filed motions to dismiss are made to the appellant courts.

In *McCloud v. Faust*, 92 N.C. App. 370, 374 S.E.2d 417 (1988), the Court of Appeals holds that the appellant, here the Petitioner, bears the burden of seeing that the record on appeal is properly settled and filed with the court.

In *Taylor v. City of Lenoir*, 140 N.C. App. 337, 536 S.E.2d 848 (2000), the Court of Appeals dismissed the appeal based upon violations of the Appellate Rules.

The court held that the Appellate Rules are mandatory and that failure to follow them subjects an appeal to dismissal.

The court held further that the rules are designed to keep the process of perfecting an appeal flowing in an orderly manner and that counsel is not permitted to decide upon his own enterprise how long he will wait to take his next stage in the appellate process.

> "This Court has recently dismissed appeals for appellate rules violations. See *Bower v. NC Dept. of Health*, 135 NC App 122, 519 S E 2d 60 (1999); *Bledsoe v. County*, infra.; *Talley v. Talley*, 133 NC App 87, 513 SE 2d 838, review denied 350 NC 599, 537 SE2d 495 (1999); *Webb v. McKeel*, 132 NC App 816, 513 SE 2d 596 (1999); *Duke University v. Bishop*, 131 NC App 545, 507 SE 2d 904 (1998)."

In *Bledsoe v. County*, supra., plaintiff appealed from summary judgment in favor of the defendants. Plaintiff failed to comply with a number of the appellate rules.

The court held: "The Rules of Appellate Procedure are mandatory; failure to comply with the rules subjects an appeal to dismissal . . . Furthermore, these rules apply to everyone – – whether acting *pro se* or being represented by all of the five largest law firms in the state. Because plaintiff violated many of the appellate rules, his appeal must be dismissed, notwithstanding his *pro se* status."

In *Steingress v. Steingress*, 350 N.C. 64, 511 S.E.2d 298 (1999), the Court of Appeals dismissed defendants' appeal for failure to file a brief in compliance with Rules 26(g) and 28(b). This was affirmed by this Court, holding:

> "The appellate courts of this state have long and consistently held that the rules of appellate practice . . . are mandatory and that failure to follow these rules will subject an appeal to dismissal. *Jim Walter Corp. v. Gilliam*, 260 NC 211, 132 S.E.2d 313 (1963); *Wisener v. Wiseman*, 68 NC App 252, 314 S.E.2d 566 (1984). In *Bradshaw v. Stansbury*, 164 NC 356, 79 S.E.2d 302 (1913), Chief Justice Clark, speaking for this Court and addressing the increasing number of appeals stated: "It is, therefore, necessary to have rules of procedure and to adhere to them, and if we relax them in favor of one, we might as well abolish them.'"

Richardson v. Bingham, 101 N.C. App. 687, 400 S.E.2d 757 (1991) holds that: "The Rules of Appellate Procedure are mandatory, and since plaintiff failed in several respects to comply with the applicable rules . . . and upon motion, plaintiff's appeal is dismissed. N.C.R. App. P. 25 (1990)."

Finally, in *Craver v. Craver*, 298 N.C. 121, 258 S.E.2d 357 (1979), this court held:

> "Ordinarily our legal system operates in an adversary mode. One incident of this mode is that only those who properly appeal from the judgment of the trial divisions can get relief in the appellate divisions. This can be a strict requirement . . . The Rules of Appellate Procedure are mandatory . . . Thus, where an appellant fails within the time allowed by these rules or by order of the court to take any action required to prevent the appeal for decision, the appeal may on motion of any party be dismissed . . . A failure by appellant to meet the requirements of App. R.

11 (e) or to comply with the mandate of App. R.
12 (a) . . . works a loss of the right of appeal."

Rule 2 provides that the court has the discretionary right to suspend or vary the rules " . . . to prevent injustice to a party, or to expedite decision in the public interest."

As to the injustice issue it should be noted that Petitioner has had more than his fair chance and opportunity to submit his claim to our North Carolina court system. Specifically, this is the third civil action instituted by the Petitioner for the identical claim sought against these Respondents as indicated in the section of this Brief entitled *Opinions Below* and in the Appendix.

A second point as to any alleged injustice to the Petitioner as to this dismissal based upon violations of our State rules of procedure, it should be pointed out that this entire judgment arising out of the Kentucky federal court litigation was the result of a judgment, not on the merits, but one which was based upon the entry of a default judgment on liability against all of these Respondents based upon motions by the Petitioner made by him for the Respondents' alleged discovery violations in that proceeding. This deprived these Respondents, not only of a jury trial but of the opportunity to defend the case on its merits. The penalty assessed by the Federal District Court Judge for these alleged violations was a sanction resulting in the entry of the default judgment as to liability and deprivation of a jury trial. Even so, the case for damages was heard at the direction of the Federal District Court Judge by the Federal Magistrate Judge, the only evidentiary hearing ever held, and that Judge after hearing the testimony of the Petitioner and his witnesses and after considering the proffered depositions, awarded *no* punitive

damages and only $16,000.00 which was an amount *agreed* upon by the Respondents as representing the return of the Petitioner's option amount of $15,000.00 plus agreed upon attorney's fees for the Petitioner of $1,000.00. This recommendation was, however, amended by the Federal District Judge who awarded the Petitioner $111,200.53 as compensatory damages and $500,000.00 as punitive damages despite hearing *no* evidence or testimony from any witnesses or parties.

Consequently, these Respondents respectfully contend that the affirmance by the North Carolina courts of the dismissal pursuant to Rule 2, would not be such as would interfere with justice to the Petitioner, is not such an exceptional case as envisioned by the Rule to warrant the application of that rule, and certainly the case, under the circumstances, does not present significant issues of importance in the public interest. The Petitioner has flagrantly violated the rules and he has been treated patiently and justly by the court systems, State and Federal, and has had more than ample opportunity to establish his claims. Rule 2 should not, therefore, be applied.

CONCLUSION

For the foregoing reasons, these Respondents Wade contend that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted, this 25th day of July 2005.

CRANFORD, SCHULTZE AND
TOMCHIN, P.A.

MICHAEL F. SCHULTZE
2813 Coltsgate Road, Suite 200
Charlotte, NC 28211
(704) 442-1010

Attorney for Respondents Wade

APPENDIX 1

ORDER OF HONORABLE MARVIN K. GRAY
Dated 12 December 2003

STATE OF NORTH CAROLINA COUNTY OF MECKLENBURG PAULL ANDERSON, **Plaintiff,** **v.** **JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC., and WADE AND WADE, ATTORNEYS AT LAW,** **Defendants.**	**IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION** **03-CVS-16356** **ORDER** **(Filed Dec. 12, 2003)**

THIS CAUSE came before the Court at the December 10, 2003 session of Superior Court upon Plaintiff's Motion to Enforce Foreign judgment filed on September 22, 2003. Plaintiff appeared *pro se*. Defendants Julius Jennings Wade, Jr., James H. Wade and Wade and Wade were represented by Michael F. Schultze of the firm of Cranford, Schultze & Tomchin. Defendant Margaret L. Godley was represented by William K. Diehl, Jr. and John S. Arrowood of the firm of James, McElroy & Diehl, P.A. The Court, having considered the Motion, pleadings, all documents of record, the submissions of the parties and oral argument finds:

1. Plaintiff has failed to comply with the mandatory requirements of Article 17, G.S. §1C-1701, *et seq.*, particularly the provisions of N.C.G.S. §1C-1703.

2. Plaintiff has not met his burden under the provisions of N.C.G.S. §1C-1705, nor has he complied with the North Carolina Rules of Civil Procedure.

3. The Judgment Plaintiff seeks to enforce is contrary to the public policies of the State of North Carolina, particularly the provisions of Chapter 1D of the North Carolina General Statutes.

4. Because the Judgment Plaintiff seeks to enforce is violative of the North Carolina Public Policy, it is unenforceable pursuant to the provisions of N.C.G.S, §1C-1708.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court concludes as a matter of law that the above referenced findings, jointly and severally, mandate that Plaintiff's Motion to Enforce Foreign Judgment should be denied.

IT IS THEREFORE **ORDERED, ADJUDGED** and **DECREED** that Plaintiff's Motion to Enforce Foreign Judgment be and the same hereby is, **DENIED**.

To the entry of the foregoing findings and conclusions and Order, Plaintiff objects and excepts.

This the 12 day of December, 2003.

/s/ Marvin K. Gray
Marvin K. Gray
Superior Court Judge
Presiding

APPENDIX 2

AFFIDAVIT OF RESPONDENT JULIUS JENNINGS WADE, JR. Dated 22 October 2003

STATE OF NORTH CAROLINA	**IN THE GENERAL COURT OF JUSTICE**
COUNTY OF MECKLENBURG	**SUPERIOR COURT DIVISION**
	03-CVS-16356
Paull Anderson,	**AFFIDAVIT**
Plaintiff,	**(Julius Jennings Wade, Jr.)**
vs.	
Julius Jennings Wade, Jr., et al.,	
Defendants.	

Julius Jennings Wade, Jr., a Defendant in the captioned case originating in the United States District Court, Eastern District of Kentucky, Pikeville Division, the registration of which judgment has been filed with this Court for enforcement as a foreign judgment, being first duly sworn, deposes and says:

1.

He is one of the Defendants in said case along with Margaret L. Godley and others.

2.

The undersigned is fully familiar with all of the events in the trial of the case in the Commonwealth of Kentucky,

having attended all of the hearings requiring attendance of the parties.

3.

The case was referred by the District Court Judge to Magistrate Judge Peggy E. Patterson for trial as a non jury matter April 29-30, 1998 in Pikeville, Kentucky after the Plaintiff was granted a default judgment against the Defendants on the issues of fraud and misrepresentation issues based upon discovery violations. The issue for trial was damages.

4.

The case arose out of a written option contract obtained by the Plaintiff from the Defendant Margaret L. Godley for Fifteen Thousand Dollars ($15,000.00) to purchase all of the corporate stock ownership in Godley, Inc. owned by Defendant Margaret L. Godley. Godley, Inc. is a Kentucky corporation which in turn was the record owner of approximately twenty-four thousand seven hundred (24,700) acres of land in Knott, Perry and Breathitt Counties in Kentucky.

5.

An earlier United States District Court case in Kentucky had declared and held in a *trespass* case that the title to the acreage was void because of an inability to locate the property on the ground by survey. Based thereupon, in that case, the cross-claim of Mrs. Godley and her husband, now deceased, for damages for the appropriation

of the minerals on the property was dismissed by summary judgment. [Emphasis added.]

6.

This holding was not communicated to the Plaintiff by the Defendants because it did not arise out of a quiet title action, but a *trespass* action, and the Defendants' contentions were that it did not affect the *title* to the acreage. [Emphasis added.]

7.

The District Court, however, in that case, held otherwise in declaring the title void and this was appealed to the 6th Circuit Court of Appeals where it was affirmed under an unpublished *Per Curiam* decision that the title was "*facially* void," referring to the District Court opinion which actually did not so hold.

8.

The Plaintiff then decided against the exercise of the option after he learned of the earlier decision and forfeited his Fifteen Thousand Dollars ($15,000.00) option payment to Mrs. Godley.

9.

Thereafter, at the evidentiary hearing on damages before Magistrate Judge Patterson and after hearing the testimony of the Plaintiff and his witnesses and the proferred depositions, the Magistrate Judge, in applying Kentucky law, awarded as compensatory damages the sum

of Sixteen Thousand Dollars ($16,000.00) which was the amount agreed to be paid the Plaintiff as a return of the option amount of Fifteen Thousand Dollars ($15,000.00) plus the sum of One Thousand Dollars ($1,000.00) which the Plaintiff testified was the amount of attorney's fees paid prior to the trial. (See Magistrate Judge's Report and Recommendation, attached as Exhibit "A" to these Defendants' Response).

10.

All other claims for damages were denied by the Magistrate Judge and she found that the Plaintiff conceded at the trial that he had not actually expended any more money "except a couple thousand dollars out of (his) pocket . . . " but offered no evidence to support even this amount.

11.

At the trial, the Defendants offered into evidence:

(1) The metes and bounds described Deed.

(2) A title opinion of a Kentucky attorney tracing the title to Mrs. Godley.

(3) A title insurance policy with certain exceptions, including the exception as to the earlier trespass case.

(4) An IRS certification of the Indian Foundation which purchased the property with knowledge of the earlier case.

(5) Copy of the Option Agreement of the Indian Foundation which indicates the earlier case as an exception to the title.

(6) A current up-to-date survey of a Kentucky engineer and surveyor which located the property on the ground from the metes and bounds described Deed.

(7) Affidavit of a Samuel Grigsby, a party to the Indian Foundation purchase, stating his agreement based upon legal advice that the earlier decision should not have affected the title.

12.

In her recommendation to the District Court Judge after a trial of the case, as to the issue of punitive damages, she held:

> "Punitive damages may be awarded for conduct that is outrageous, because of the Defendant's evil motive or his reckless indifference to the rights of others . . . the question is whether the Defendant's misconduct has the character of outrage . . . Punitive damages are warranted only where the Defendant has acted wantonly, or recklessly, or oppressively, or with malice as implies a spirit of mischief or criminal indifference to the civil litigation . . .
>
> . . . Plaintiff is not entitled to an award of punitive damages . . . To be entitled to an award of such damages, Plaintiff must prove that Defendant's conduct was so outrageous that it constitutes evil motive or reckless indifference to the rights of others."
>
> " . . . By even the most liberal standard of a preponderance of evidence, and with the further liberality to which a pro se Plaintiff is entitled, Plaintiff failed to submit any additional evidence,

much less did he otherwise exhibit that Defendants' actions albeit fraudulent, also amounted to outrageous conduct. This lack of proof on the issue requires that the Defendants' claim for punitive damages be denied."

13.

This Report and Recommendation was submitted to the District Court for entry of a judgment and the District Court Judge, despite the fact that he never heard a single bit of testimony, or ever set his eyes on any of the Defendants, or ever heard any of the testimony of any witness, and who never ruled on or considered any of the objections to the trial court evidence as requested by the Magistrate Judge at the conclusion of the trial, failed to accept the Report of the Magistrate Judge who heard the case, and entered judgment against the Defendants for compensatory damages in the amount of One Hundred Eleven Thousand Two Hundred Dollars and Fifty-Three Cents ($111,200.53) and punitive damages in the amount of Five Hundred Thousand Dollars ($500,000.00) and in an opinion not recommended for publication, the 6th Circuit Court of Appeals affirmed the District Court Judgment.

14.

The District Court Judge, in refusing to accept the recommendation of the Magistrate Judge, made five (5) essential findings to support its award of punitive damages; to wit,

(1) Violations of discovery orders on which the 6th Circuit Court expressed *no* opinion. [Emphasis added.]

(2) Alleged violations of North Carolina Bar Rules which clearly on their face do not represent any grounds for relief in a civil case and are *not* to be entered as evidence in a civil case and to make it worse, they were not even introduced at the trial. [Emphasis added.]

(3) A so-called Skelly Loy Report describing minerals on the property which was not submitted by these Defendants to the Plaintiff at any time, was never proven to have been discussed with the Plaintiff at any time, and was never shown to have been read at any time by the Plaintiff, nor ever even in the Defendants' possession.

(4) The option contract in question between the parties which has no warranties or covenants of title and which provide that no representations as to such as made by the Defendants.

(5) Alleged attempts to sell the property three (3) additional times; first, to the Indian Foundation which contract addresses in writing the earlier trespass case as an exception; secondly, to a Dr. Harber whom the Defendants never even met and there was no evidence otherwise; and to the Wolford Brothers whom the Defendants never met and there was no evidence otherwise.

Even so, the District Court found such as evidence to support an award of punitive damages in the amount of Five Hundred Thousand Dollars ($500,000.00). Such an award for a claim of punitive damages, in accordance with G. S. § 1 C-1708 entitled *Judgments Against Public Policy* provides that foreign money judgments cannot be based on

claims which are contrary to the public policies of North Carolina and G. S. § 1D-25 entitled *Limitation of Amount of Recovery* provides that punitive damages awarded against a Defendant shall not exceed three times the amount of compensatory damages or Two Hundred Fifty Thousand Dollars ($250,000,00) whichever is greater.

The judgment sought to be enforced is penal, and is violative of the public policy of this state. In this instance, based upon the circumstances of this case, the State of North Carolina's public policy should respectfully protect these Defendants, all citizens of this state and the Judgment should not be enforced.

This 22nd day of October, 2003.

/s/ Julius Jennings Wade, Jr.
Julius Jennings Wade, Jr.

Sworn to and subscribed before me,
this 22nd day of October, 2003.

/s/ Susan R. Sherman
Notary Public

My Commission expires: 2/12/05
[SEAL]

APPENDIX 3

Motion to Dismiss of Respondent Godley dated 28 May 2004 (without attachments)

COA 04-715 **Twenty-Sixth Judicial District**

NORTH CAROLINA COURT OF APPEALS

****

PAULL ANDERSON,	)	**From Mecklenburg**
Plaintiff,	)	**County**
	)	
v.	)	
JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC. and WADE AND WADE, ATTORNEYS AT LAW,	)	
Defendants.	)	

* *

MOTION TO DISMISS APPEAL

* *

Pursuant to the provisions of Rules 11, 27 and 36 of the North Carolina Rules of Appellate Procedure, Defendant-Appellee Margaret L. Godley moves the Court to dismiss the Plaintiff-Appellant's appeal for failure to timely docket the Appeal. In support of this Motion, Godley shows the following:

1. Plaintiff-Appellant gave Notice of Appeal to the North Carolina Court of Appeals on December 31, 2003 from the December 12, 2003 Order of Judge Marvin K.

Gray dismissing his Motion to Enforce Foreign Judgment. A copy of this Notice is attached hereto as Exhibit A (R.p. 169).

2. Appellant served his proposed Record on February 17, 2004 via first class mail. A copy of the document showing service is attached hereto as Exhibit B (R.p. 170).

3. On March 9, 2004, Appellee Godley filed Objections and Amendments to the Proposed Record on Appeal. A copy of these Objections and Amendments to the Proposed Record on Appeal are attached hereto as Exhibit C (R.pp. 171-175).

4. On March 12, 2004, Appellant requested judicial settlement. A copy of this request is attached hereto as Exhibit D (R.p. 176).

5. On March 25, 2004, Appellant wrote the trial judge inquiring as to a hearing date for settling the Proposed Record on Appeal. A copy of this letter is attached hereto as Exhibit E (R.p. 177).

6. On March 26, 2004, Appellant wrote a letter explaining that Judge Gray could not settle the record and noticed a hearing to settle the record on appeal for May 5, 2004 before the presiding Judge in Courtroom 307. A copy of the Notice of Hearing and letter are attached hereto as Exhibit F (R.pp. 178-179).

7. The hearing to settle the Record took place before Judge Richard D. Boner (the Judge assigned to preside over Courtroom 307) on May 5, 2004. An Order settling the record was entered on May 12, 2004. A copy of this Order is attached hereto as Exhibit G (R.pp. 180-182).

8. The Record was filed in the Court of Appeals on May 24, 2004.

9. Pursuant to the provisions of Rule 11(c), the Record on Appeal was filed untimely and the Appeal must be dismissed.

10. Rule 11(c) of the North Carolina Rules of Appellate Procedure, in pertinent part, provides:

> Within twenty-one (21) days (thirty-five [35] days in a capitally tried case), after service upon him of Appellant's proposed record on appeal, the Appellee may serve upon all other parties specific amendments or objections to the proposed record on appeal or a proposed alternative record on appeal. Amendments or objections to the proposed record on appeal shall be set out in a separate paper.
>
> If any Appellee timely serves amendments, objections or a proposed alternative record on appeal the Appellant or any other Appellee, within ten (10) days after the expiration of the time within which the Appellee last served, may have served, may in writing request the judge from whose judgment, order or determination for appeal was taken to settle the record on appeal. A copy of the request, enclosed with a certificate showing service on the judge shall be filed forthwith in the office of the clerk of superior court and served upon the other parties. . . .
>
> The judge shall send written notice to counsel for all parties setting a time and a place for the hearing to settle the record on appeal. The hearing shall be held no later than fifteen (15) days after service of the request of hearing upon the judge. The judge shall settle the record on

> appeal by order entered not more than twenty (20) days after service of request for hearing upon the judge. . . .

11. Rule 27(c) of the North Carolina Rules of Appellate Procedure provides for extensions of time when tasks cannot be accomplished in a timely manner.

12. Rule 36(b) of the North Carolina Rules of Appellate Procedure in pertinent part provides:

> When these Rules the authority to enter an order or take other judicial action is limited to a particular judge and that judge is unavailable for the purpose by reason of death, mental or physical incapacity or absence from the state, the Chief Justice will, upon motion of any party designate another judge to act on the matter. Such designation will be by order entered *ex parte* copies of which will be mailed forthwith by the Clerk of the Supreme Court to the judge designated and to all parties.

13. Appellant's Record is subject to dismissal for failure to comply with the above stated requirements of the Rules.

14. Appellant did not obtain judicial settlement, nor did he file his Record, within the time allowed by Rule 11(c). Mrs. Godley's objections were made on March 9, 2004, making the Record due at the Court of Appeals no later than April 26, 2004. However, the record was not filed until May 24, 2004, twenty-eight (28) days after it was due.

15. Appellant is likely to argue that he should not be penalized for this because he attempted to comply with the Rules, but was unable to do so. This argument is not

justified. As evidenced by Exhibit E, Anderson knew the time requirements of the Rules. He also knew he could not comply within the time frame as set forth in the Rules to settle the Record. Even so, he neither sought nor obtained an extension of time from this Court to obtain settlement of the Record.

16. In addition, Appellant has failed to comply with the provision of the Rules regarding the settlement of the Record. Appellate Rule 11 specifically provides for the judge whose order is being appealed is the proper judge to settle the Record. Appellate Rule 36(c) also provides the mechanism is to be followed if the trial judge is unavailable to do so.

17. In this case, the trial judge (Judge Gray) did not settle the Record, nor did Appellant comply with the requirements of Rule 36 to have the Chief Justice designate Judge Boner to settle the Record. Thus, in addition to being late, the Record which the Appellant filed has not been properly settled under the Rules.

18. The Appellate Rules are abundantly clear. They set forth a designated time and procedure whereby a record is to be settled and filed. The Rules further set forth the procedure to be followed when more time is needed to comply and when a different judge is needed to settle the Record. Not only has Appellant failed to comply with either of these requirements he has made no effort to do so.

19. The North Carolina Rules of Appellate Procedure are mandatory. Those Rules govern procedures in all appeals from the courts of the trial division to the courts of the appellate division. *See, State v. Motsinger*, 31 N.C.App.

294, 230 S.E.2d 205-206, *cert. denied*, 291 N.C. 714, 232 S.E.2d (1977).

20. In *McCloud v. Faust*, 92 N.C.App. 370, 374 S.E.2d 417 (1988) this Court stated:

> The appellant bears the burden of seeing that the record on appeal is properly settled and filed with the Court.

21. In this case Appellant did not meet his burden and the Record presented was not settled nor filed in compliance with the Rules of Appellate Procedure. Therefore, the appeal must be dismissed.

This the 28th day of May, 2004.

JAMES, McELROY & DIEHL, P.A.

/s/ John S. Arrowood

William K. Diehl, Jr.
John S. Arrowood
600 South College Street
Charlotte, North Carolina 28202
Telephone: (704) 372-9870
Attorneys for Defendant-Appellee
Margaret L. Godley

APPENDIX 4

MOTION TO DISMISS OF RESPONDENTS WADE
Dated 4 June 2004

COA 04-715 TWENTY-SIXTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

* * * * * * * * * *

PAULL ANDERSON, Plaintiff/Appellant, vs. JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC. and WADE AND WADE, ATTORNEYS AT LAW, Defendants/Appellees.	From Mecklenburg County

* *

MOTION AND JOINDER IN SUPPORT OF MOTION TO DISMISS APPEAL

* *

Defendants/Appellees Julius James Wade, Jr., James H. Wade and Wade and Wade, through the undersigned counsel, hereby give notice of their support and joinder in the Motion to Dismiss Appeal filed and served herein by Defendant/Appellee Margaret L. Godley on the grounds that the Plaintiff/Appellant failed to both timely docket the Record on Appeal and failed to have appointed or otherwise seek to have appointed by the Chief Justice a judge to settle the Record as required by the Rules.

In support hereof, the Wade Appellees join in and incorporate herein by reference each and every argument set forth in the Motion to Dismiss Appeal of Appellee Godley and specifically allege that pursuant to Rule 11(c) the Record on Appeal is not timely, having been filed approximately 28 days after the deadline as required by Rule 11(c). Furthermore, in the event of unavailability or incapacity of the trial judge, as was the case of The Honorable Marvin Gray below, Rule 36(b) of the North Carolina Rules of Appellate Procedure specifically provide that it is the Chief Justice who will, upon the motion of a party, designate another judge to act in the matter. In addition, pursuant to Rule 27(c), Appellant neither obtained nor attempted to obtain an extension of time for the performance of any of his obligations with respect to the settling and filing of this Record.

THEREFORE, for all the reasons set forth in the Godley's Motion to Dismiss Appeal, the Wade Appellees join therein and respectfully request this Court dismiss Plaintiff/Appellant's Appeal.

This the 4th day of June, 2004.

CRANFORD, SCHULTZE, TOMCHN, P.A.

By: /s/ Michael F. Schultze
Michael F. Schultze
Attorneys for Defendants/Appellees
Julius Jennings Wade, Jr., James H. Wade
and Wade and Wade, Attorneys at Law
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Charlotte, NC 28211
(704) 442-1010
State Bar No.: 12547

APPENDIX 5

ORDER OF NORTH CAROLINA COURT OF APPEALS DISMISSING APPEAL
Dated 11 June 2004

No. COA04-715

North Carolina Court of Appeals

****

PAULL ANDERSON,

Plaintiff

V

JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC., and WADE AND WADE, ATTORNEYS AT LAW,

Defendants

From Mecklenburg (03C VS 16356)

****

ORDER

(Filed June 11, 2004)

The following order was entered:

The motion filed in this cause on the 1st day of June 2004 and designated "Motion to Dismiss Appeal" is allowed. Appeal dismissed. Plaintiff-appellant to pay costs.

And it is considered and adjudged further, that the Appellant, Paull Anderson, do pay the costs of the appeal in this Court incurred, to wit, the sum of Nine Dollars and 00/100 ($9.00), and execution issue therefor.

By order of the Court this the 8th day of June 2004.

The above order is therefore certified to the Clerk of Superior Court Mecklenburg County.

Witness my hand and official seal this the 11th day of June 2004.

/s/ John H. Connell
John H. Connell
Clerk of North Carolina Court
of Appeals

CSC Orig
cc:
Mr. John S. Arrowood
Mr. William K. Diehl
Mr. Paull Anderson
Mr. Michael F. Schultze

APPENDIX 6

RESPONSE OF RESPONDENTS WADE TO PETITIONER'S NOTICE OF APPEAL Dated 1 July 2004 TO NORTH CAROLINA SUPREME COURT

No. COA 04-715 TWENTY-SIXTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

PAULL ANDERSON, Plaintiff/Appellant, vs. JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC. and WADE AND WADE, ATTORNEYS AT LAW, Defendants/Appellees.	)	From Mecklenburg County

* *

RESPONSE OF DEFENDANTS/APPELLEES WADE (HEREIN RESPONDENTS WADE) TO PLAINTIFF/APPELLANT ANDERSON'S NOTICE OF APPEAL, RULE 14, G.S. 7A-30

* *

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Now come the Defendants/Appellees Wade (herein ("Respondents Wade") and pursuant to Appellate Rule 14,

G. S ~~14~~ 7A-30, file this response to the NOTICE OF APPEAL filed by the Plaintiff/Appellant Paull Anderson.

I. THE NOTICE OF APPEAL

This NOTICE OF APPEAL dated 19 June 2004 was filed by Plaintiff/Appellant to this Court and served by mail on the Respondents Wade on the same date. It was submitted by the Plaintiff/Appellant in response to the ORDER of the Court of Appeals dated 8 June 2004 entered in response to MOTION TO DISMISS to the Court of Appeals by the Defendant/Appellee Godley (herein "Respondent Godley") and to the MOTION AND JOINDER IN SUPPORT OF MOTION TO DISMISS APPEAL by Respondents Wade dated 4 June 2004.

The Plaintiff/Appellant bases his appeal on Rule 14(b)(2), G.S. 7A-30 by asserting constitutional questions.

II. LEGAL PRINCIPLES

(a) Rule 14(b)(2), G.S. 7A-30 is a procedure pursuant to which a party seeks to appeal an issue or issues as a matter of right to this Court from any decision rendered in a case which directly involves a substantial question arising under the Constitution of the United States or of this state.

(b) *None* of the pleadings set forth the existence and/or the violations of any such constitutional issues. It simply involves the application of N.C.G.S. Section 1C-1701, *et seq.*, North Carolina Uniform Enforcement of Foreign Judgments Act and N.C.G.S. 1D-25, North Carolina's punitive judgment's legislation and certain rules of North Carolina procedure.

(c) The aforesaid rule requires the existence of a substantial constitutional questions, the assertion of the issue or issues which are the basis of the constitutional claim, the specific articles and sections of the Constitution asserted to be involved, the rights violated with particularity and that such an issue was timely raised. This was not done.

(d) The trial court's decision or ruling was not based upon any assertion of any constitutional right or any violation thereof.

(e) Any such constitutional question must be a real and not merely a superficial one. It must be a substantial issue and it must be alleged and shown.

(f) It must be one which has not already been the subject of conclusive judicial determination and "mere mouthing of constitutional phrases like "due process of law" and "equal protection of the law will not suffice . . . " (see *State vs. Colson*, 274 NC 295 (1968).

What the Plaintiff/Appellant has done is to seek the Court's attention based upon his status as a "pro-se farmer" by suggesting an alleged heavy handed, prejudicial, unjust partiality against him as a "Virginia farmer" in violation of authority regarding the treatment of *pro se* litigants, whereas suggesting, without any foundation, preferential treatment of the Respondents as "corrupt and evil parties" as well as their "devious" counsel and he has demeaned the distinguished trial Judge whose conduct he describes, among other ways, as egregious, improper and in deliberate defiance of the Rules.

He sets forth no basis for this extraordinary right of appeal.

III. CONCLUSION

For the reasons assigned, the Order of the Court of Appeals, respectfully, should be affirmed and the case dismissed in accordance with said Order and the costs should be taxed against Plaintiff/Appellant. He has flagrantly violated the rules and he has been treated justly by the court systems, State and Federal, and has had more than ample opportunity to establish his claims without assistance from this extraordinary remedy.

Respectfully submitted, this 1st day of July, 2004.

CRANFORD, SCHULTZE AND TOMCHIN, P.A.

By: /s/ R. Gregory Tomchin
R. Gregory Tomchin
Attorneys for Defendants/Appellees
Julius Jennings Wade, Jr., James H. Wade
and Wade and Wade, Attorneys at Law
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State Bar No.: 16189

APPENDIX 7

RESPONSE OF RESPONDENTS' WADE TO PETITIONER'S PETITION FOR DISCRETIONARY REVIEW

Dated 1 July 2004 to

NORTH CAROLINA SUPREME COURT

No. COA 04-715 TWENTY-SIXTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

PAULL ANDERSON, Plaintiff/Appellant; vs. JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC. and WADE AND WADE, ATTORNEYS AT LAW, Defendants/Appellees.	From Mecklenburg County No. 03-CVS-16356

* *

RESPONSE OF DEFENDANTS/APPELLEES WADE (HEREIN RESPONDENTS WADE) TO PLAINTIFF/APPELLANT ANDERSON'S PETITION FOR DISCRETIONARY REVIEW (HEREIN PETITION) PURSUANT TO APPELLATE RULE 15(d), G.S. 7A-31.

* *

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Now come the Defendants/Appellees Wade (herein ("Respondents Wade") and pursuant to Appellate Rule 15(d), G. S 7A-31, file this response to the PETITION FOR DISCRETIONARY REVIEW (herein "Petition") filed by Plaintiff /Appellant Paull Anderson (herein "Petitioner").

I. THE PETITION

This Petition dated 19 June 2004 was filed by the Petitioner to this Court and served by mail on the Respondents Wade on the same date. It was submitted by the Petitioner in response to the ORDER of the Court of Appeals dated 8 June 2004 entered pursuant to MOTION TO DISMISS THE PETITIONER'S APPEAL to the Court of Appeals by the Defendant/Appellee Godley (herein "Respondent Godley") and to the MOTION AND JOINDER IN SUPPORT OF MOTION TO DISMISS APPEAL by Respondents Wade dated 4 June 2004.

II. COURT OF APPEALS ORDER

The aforesaid Order was issued by the Court of Appeals pursuant to MOTION TO DISMISS APPEAL filed by the Respondent Godley dated 28 May 2004 as joined in by MOTION AND JOINDER IN SUPPORT OF MOTION TO DISMISS APPEAL as filed by Respondents Wade dated 4 June 2004.

III. RULES VIOLATIONS

As the materials certified by the Court of Appeals to the Court indicate, a proposed record was served by the

Petitioner on the Respondents on 17 February 2004. Then the Respondent Godley timely filed her proposed Objections and Amendments and the Respondents Wade timely served on Petitioner a Proposed Alternative Record.

On 12 March 2004 the Petitioner requested judicial settlement and then on 26 March 2004 the Petitioner advised that the presiding judge could not settle the record and noticed a hearing for settlement for 4 May 2004 before the presiding judge in Courtroom 307 in violation of Rule 11(c).

The hearing was held on 4 May 2004 before The Honorable Richard D. Boner who had not heard the case and who was the presiding judge in Courtroom 307. This was in violation of Rule 11(c).

Notwithstanding, an order settling the record was thereafter signed on 12 May 2004 by Judge Boner and ultimately the Record on Appeal was docketed with the Clerk of the Court of Appeals on 24 May 2004.

Pursuant to Rule 11(c) the proposed record was not timely filed and the Order of the Court of Appeals should be affirmed for the following Rules violations:

(a) Rule 11(c), in part, provides that upon the timely service by the Petitioner of a proposed record, the Respondents may serve all parties with amendments and objections to the proposed record, or an alternative record, within 10 days. Then, the Petitioner may in writing request the judge from whose judgment was taken to settle the record and serve the same on all parties. That judge shall send written notice setting a time and place for the hearing which shall be held no later than fifteen (15) days. The judge shall then settle the record by order

entered no more than twenty (20) days after service of the request. This Rule was violated by setting the hearing before Judge Boner.

(b) Rule 27(c) clearly provides for extensions of time to abide by the Rules. This Rule was not followed.

(c) Rule 36(b) clearly mandates that when the authority to enter an order or take other judicial action is limited to a particular judge, as in this case, and the judge is unavailable, as in this case, the Chief Justice of this Court will, upon Motion of any party designate another judge to act. This rule was not followed.

(d) Here, Petitioner's actions not only violated Rule 11(c) by not obtaining judicial settlement of the record within the prescribed period, he, in addition, did not docket this record until 24 May 2004, thus violating Rule 12 by late docketing of the record by filing it twenty-eight (28) days after it was due.

(e) In addition to this, Petitioner immediately became aware of the unavailability of the proper judge to settle the record and that he did not comply with the Rules which are abundantly clear as to securing additional time from the court to do so, yet he neither sought nor obtained an extension of time to obtain settlement of the record in accordance with Rule 11. He also violated Rule 36(c) which provides the method of appointment of another judge for such settlement.

IV. LEGAL PRINCIPLES SUPPORTING DISMISSAL

Rule 25, entitled *Penalties for Failure to Comply with Rules*, provides, in part, that if, after giving Notice of Appeal from any court, the appellant shall fail within the

time allowed, to take any action required to present the appeal for decision, the appeal may or motion be dismissed. After an appeal has been filed motions to dismiss are made to the appellant courts.

In *McCloud v. Faust*, 92 N.C. App. 370, 374 SE2d 417 (1988), the Court of Appeals holds that the appellant, here the Petitioner, bears the burden of seeing that the record on appeal is properly settled and filed with the court.

In *Taylor v. City of Lenoir*, 140 NC App 337, 536 SE2d 848 (2000), the Court of Appeals dismissed the appeal based upon violations of the Appellate Rules.

The court held that the Appellate Rules are mandatory and that failure to follow them subjects an appeal to dismissal.

The court held further that the rules are designed to keep the process of perfecting an appeal flowing in an orderly manner and that counsel is not permitted to decide upon his own enterprise how long he will wait to take his next stage in the appellate process.

> "This Court has recently dismissed appeals for appellate rules violations. See *Bower v. NC Dept. of Health*, 135 NC App 122, 519 S E 2d 60 (1999); *Bledsoe v. County*, infra.; *Talley v. Talley*, 133 NC App 87, 513 SE 2d 838, review denied 350 NC 599, 537 SE2d 495 (1999); *Webb v. McKeel*, 132 NC App 816, 513 SE 2d 596 (1999); *Duke University v. Bishop*, 131 NC App 545, 507 SE 2d 904 (1998)."

In *Bledsoe v. County*, 135 NC App 124 (1999), 519 SE 2d 316 (1999), plaintiff appealed from summary judgment

in favor of the defendants. Plaintiff failed to comply with a number of the appellate rules.

The court held: "The Rules of Appellate Procedure are mandatory; failure to comply with the rules subjects an appeal to dismissal . . . Furthermore, these rules apply to everyone – whether acting *pro se* or being represented by all of the five largest law firms in the state. Because plaintiff violated many of the appellate rules, his appeal must be dismissed, notwithstanding his *pro se* status."

In *Steingress v. Steingress*, 350 NC 64, 511 SE2d 298 (1999), the Court of Appeals dismissed defendants' appeal for failure to file a brief in compliance with Rules 26(g) and 28(b). This was affirmed by this Court, holding:

> "The appellate courts of this state have long and consistently held that the rules of appellate practice . . . are mandatory and that failure to follow these rules will subject an appeal to dismissal. *Jim Walker Corp. v. Gilliam*, 260 NC 211, 132 SE 2d 313 (1963); *Wiseman v. Wiseman*, 68 NC App 252, 314 SE 2d 566 (1984). In *Bradshaw v. Stansbury*, 164 NC 356, 79 SE 2d 302(1913), Chief Justice Clark, speaking for this Court and addressing the increasing number of appeals stated: "It is, therefore, necessary to have rules of procedure and to adhere to them, and if we relax them in favor of one, we might as well abolish them."

Richardson v. Bingham, 101 NC App 687, 400 SE 2d 757 (1991) holds that: "The Rules of Appellate Procedure are mandatory, and since plaintiff ~~failed~~ in several respects to comply with the applicable rules . . . and upon motion, plaintiffs appeal is dismissed. NCR App P. 25 (1990)."

> Finally, in *Craver v. Craver*, 298 NC 121, 258 SE 2d 357 (1979), this court held: "Ordinarily our legal system operates in an adversary mode. One incident of this mode is that only those who properly appeal from the judgment of the trial divisions can get relief in the appellate divisions. This can be a strict requirement . . . The Rules of Appellate Procedure are mandatory . . . Thus, here an appellant fails "within the time allowed by these rules or by order of the court to take any action required to prevent the appeal for decision, the appeal may on motion of any party be dismissed . . . A failure by appellant to meet the requirements of App. R. 11 (e) or to comply with the mandate of App. R. 12 (a) . . . works a loss of the right of appeal."

V. RULE 2

This court has the discretionary right to suspend or vary the rules " . . . to prevent injustice to a party, or to expedite decision in the public interest." It should be noted that the Petitioner has not requested this of either this Court or the Court of Appeals. However, should it be requested or should this court consider this rule on its own motion, these Respondents Wade wish to point out that in *Steingress*, supra, this Court held that this residual power of the Court is the discretionary power of the Court to consider, in *exceptional cases*, (emphasis added), significant issues of importance in the public interest, or to prevent injustice which appears manifest to the Court and *only* in such instances. (emphasis added).

As to the injustice issue it should be noted that Petitioner has had more than his fair chance and opportunity to submit his claim to our North Carolina court

system. Specifically, this is the third civil action instituted by the Petitioner for the identical claim sought against these Respondents; to wit, on December 6, 2000 civil action number 00-CVS-1892 was heard by the Honorable Jesse B. Caldwell who denied Petitioner's motion for his claim by Order filed 2 April 2003, subsequent to which Petitioner filed a Rule 60(b) motion and a Notice of Appeal to the Court of Appeals on 3 April 2003 and as to which he filed further Notice of Appeal to the Court of Appeals on 1 June 2003. After the court ruled on the Rule 60(b) motion on 28 May 2003, Petitioner filed his second appeal from that Order on 13 June 2003. Then, on 27 March 2003, he filed his second action for the same relief against the same parties by filing 03-CVS-5490. On 3 July 2002, the Honorable Robert P. Johnston dismissed this claim as abated. He then appealed this dismissal on 17 July 2003 to the Court of Appeals. Then, on 22 September 2003, Petitioner withdrew his appeals for the dismissals and other orders in the existing cases and on 23 September 2003, he filed this third action for the identical claim against these same parties which claim was denied on its merits by The Honorable Marvin K. Gray from which Petitioner again appealed to the Court of Appeals resulting in this dismissal. (The Record on Appeal, p. 86).

A second point as to any alleged injustice to the Petitioner as to this dismissal based upon violations of our State rules of procedure, it should be pointed out that this entire judgment arising out of the Kentucky federal court litigation was the result of a judgment, not on the merits, but one which was based upon the entry of a default judgment on liability against all of these Respondents based upon motions by the Petitioner made by him for the Respondents' alleged discovery violations in that proceeding.

This deprived these Respondents, not only of a jury trial but of the opportunity to defend the case on its merits. The penalty assessed by the Federal District Court Judge for these alleged violations was a sanction resulting in the entry of the default judgment as to liability and deprivation of a jury trial. Even so, the case for damages was heard at the direction of the Federal District Court Judge by the Federal Magistrate Judge, the only evidentiary hearing ever held, and that Judge after hearing the testimony of the Petitioner and his witnesses and after considering the proffered depositions, awarded *no* punitive damages and only $16,000.00 which was an amount *agreed* upon by the Respondents as representing the return of the Petitioner's option amount of $15,000.00 plus agreed upon attorney's fees for the Petitioner of $1,000.00. This recommendation was, however, amended by the Federal District Judge who awarded the Petitioner $111,200.53 as compensatory damages and $500,000.00 as punitive damages despite hearing *no* evidence or testimony from any witnesses or parties (The Record on Appeal, p. 99).

Consequently, these Respondents respectfully contend that the affirmance by this Court of the Order of the Court of Appeals, as a discretionary matter, pursuant to Rule 2, would not be such as would interfere with justice to the Petitioner, is not such an exceptional case as envisioned by the Rule to warrant the application of that rule, and certainly the case, under the circumstances, does not present significant issues of importance in the public interest. The Petitioner has flagrantly violated the rules and he has been treated justly by the court systems, State and Federal, and has had more than ample opportunity to establish his claims. Rule 2 should not be applied.

VI. CONCLUSION

For the reasons assigned, the Order of the Court of Appeals, respectfully, should be affirmed and the case dismissed in accordance with said Order and the costs should be taxed against the Petitioner, Paull Anderson.

Respectfully submitted, this 1st day of July, 2004.

CRANFORD, SCHULTZE, TOMCHIN, P.A.

By: /s/ R. Gregory Tomchin
R. Gregory Tomchin
Attorneys for Defendants/Appellees
Julius Jennings Wade, Jr., James H. Wade
and Wade and Wade, Attorneys at Law
2813 Coltsgate Road, Suite 200
Charlotte, NC 28211
(704) 442-1010
State Bar No.: 16189

APPENDIX 8

Respondents' Wades' Response to Petitioner's Motion to Dismiss and Discretionary Review to North Carolina Supreme Court dated 19 July 2004

No. COA 04-715 TWENTY-SIXTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

* * *

PAULL ANDERSON, Plaintiff/Appellant, vs. JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC. and WADE AND WADE, ATTORNEYS AT LAW, Defendants/Appellees.	)	From Mecklenburg County No. 03-CVS-16356

* * *

RESPONSE OF DEFENDANTS/APPELLEES WADE (HEREIN RESPONDENTS WADE) TO PLAINTIFF/APPELLANT'S RESPONSE TO DEFENDANTS/APPELLEES' MOTION TO DISMISS APPEAL AND OPPOSITION TO PETITION FOR DISCRETIONARY REVIEW

* * *

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Now come the Respondents Wade and respond to Plaintiff's Response to Defendants' Motion to Dismiss

Appeal and Opposition to Petition for Discretionary Review, as follows:

I. ARGUMENT

Cutting through the outlandish rhetoric of the Plaintiff/Appellant, especially as set forth in his latest filing, the issue before this Court continues to be whether the evidence of these Respondents Wade, as well as the Defendant/Appellee Godley, supports the entering of the Order of the Court of Appeals dated June 8, 2004 dismissing the Plaintiff/Appellant's appeal as based upon the *Motion to Dismiss* of the Appellee Godley and to the *Motion and Joinder in Support of Motion to Dismiss Appeal* by these Respondents Wade dated June 4, 2004.

The rules violations and the case law authority supporting the said Order are abundantly clear and are set forth in the filings to the Court of Appeals and in the filings to this Court and are hereby incorporated herein by reference. Based thereupon, Rule 25 is properly invoked directing a dismissal of the Plaintiff/Appellant's *Notice of Appeal* as affirmed by the Order of the Court of Appeals and *Petition for Discretionary Review* for failure of the Plaintiff/Appellant to comply with the mandated Appellate Rules and the inapplicability of Rule 2 as made apparent in these filings.

In like manner, the Plaintiff/Appellant makes no showing that the said Order should be reversed upon review of his Rule 14 *Petition for Discretionary Review* dated June 14, 2004, his Rule 15 *Notice of Appeal* dated the same date, his *Supplement to Notice of Appeal* dated June 2, 2004 and this filing dated July 3, 2004.

Simply stated, a review of this July 3, 2004 *Response of the Plaintiff/Appellant* does not even suggest by a showing of *any* proof, affidavit or otherwise as to why the Order should *not* be affirmed. What he does suggest, however, without *any* proof, affidavit or otherwise, are the following preposterous assertions:

. . . That he is entitled to a "liberal construction" of his *pro se* status per *Boswell v. Meyer,* 169 F 3d 384 6th Circuit, a Sixth Circuit case, a totally inapplicable case to this proceeding. A case specifically on point, however, is *Bledsoe v. County,* 135 N.C. App. 124 (1994) holding that the rules of appellate procedure are mandatory and applicable to everyone and that a failure to comply subjects an appeal to dismissal, whether the Plaintiff was acting *pro se* or not. " . . . his appeal must be dismissed, notwithstanding his *pro se* status."

. . . That the "honest and truthful" *pro se* Plaintiff was subjected to a "ploy" by the Court's signing a "deceitful" order denying the Plaintiff/Appellant relief which was "obviously fabricated," was "dishonest," "deceitful" and "self saving" to take advantage of the "*pro se* plaintiff which "sabotaged" the Plaintiff and was entered by a "home town judge and court" through "ex parte" communications with Judge Gray who was "mean spirited" and that the Order was prepared by "sleezy, dishonest home town lawyers" who were "corrupt and dishonest" all of which was designed to be a "trap" or a "ploy" to deprive the Plaintiff/Appellant of his rights, and which were joined in by the Clerk's Office at the direction of the trial court;

. . . That the trial Court intentionally violated and defied the Court rules and that the Court was "alone totally responsible" for the implementation of the rules

and that the Plaintiff/Appellant used the Clerk of Court to "set up the *pro se* farmer to cause a violation of the rules," and that the trial court's actions were "reprehensible" and that the Plaintiff/Appellant "had no idea that he should seek such extensions of time to file the record;"

. . . That the Plaintiff/Appellant suggests the restoration of the image of North Carolina jurisprudence to that of the Commonwealth of Kentucky as it has been tarnished by the "evil, corrupt defendants, their dishonest, deceitful lawyers and Judge Gray."

In addition, the Plaintiff/Appellant does not argue or even contend that the appellate rules as cited by the Respondents Wade and the Defendant/Appellee Godley say or mean anything other than as set forth in the materials submitted by the latter except to say in a broad stroke that the same are applied unconstitutionally to " . . . local polices, local laws . . . " and cites *Baker v. General Motors,* 522 US 222 (1998) which, on point, actually holds otherwise; to wit,

> "Full faith and credit does not mean that States must adopt the practices of other States regarding the time, manner and mechanisms for enforcing judgments. Enforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the even handed control of forum law . . . judgment may be enforced only as laws (of enforcing forum) may permit . . . the local law of the forum determines the methods by which a judgment of another state is enforced."

The Plaintiff/Appellant asserts no grounds or reasons for a reversal and his assertions are especially demeaning to a long serving Superior Court Judge.

II. CONCLUSION

Thus, for the reasons set forth herein and in the previous materials submitted to the Court, the Order of the Court of Appeals dated June 8, 2004, respectfully, should be affirmed and the cost taxed against the Plaintiff/Appellant for the gross failure of the Plaintiff/Appellant to comply with the appellate rules which are mandatory. Furthermore, there is no showing, under the circumstances, to invoke Rule 2 and there is not showing of any proof of the assertions made by the Plaintiff/Appellant as to what he alleges in the record nor is there any showing of the involvement of a real and substantial question arising under the State or Federal constitution not already the subject of conclusive judicial determination.

Respectfully submitted, this 19th day of July, 2004.

CRANFORD, SCHULTZE AND
TOMCHIN, P.A.

By: /s/ Michael F. Schultze
Michael F. Schultze
Attorneys for Defendants/Appellees
Julius Jennings Wade, Jr.,
James H. Wade and Wade and Wade,
Attorneys at Law

APPENDIX 9

Petitioner's Response to Respondents' Wades' Motion to Dismiss Appeal and Opposition to Discretionary Review dated 22 July 2004

No. COA04-715 TWENTY-SIXTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

* * *

PAULL ANDERSON, Plaintiff, vs. JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC., and WADE AND WADE, ATTORNEYS AT LAW, Defendants.	)	From Mecklenburg County

* * *

PLAINTIFF'S RESPONSE TO DEFENDANTS' WADES' RESPONSE TO PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS APPEAL AND OPPOSITION TO PETITION FOR DISCRETIONARY REVIEW

* * *

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Comes now the Plaintiff, Paull Anderson, pro se, who respectfully responds to the defendants' Wades' response to plaintiff's response to defendants' motion to dismiss

appeal and their opposition to petition for discretionary review, stating as follows:

1. While the Defendants' Wades argue that plaintiff's "latest filing" contains "outlandish rhetoric" and "preposterous assertions" they dare not accuse plaintiff's assertions of being inaccurate or misstating the facts. Plaintiff is always truthful and honest and does herewith state, on his oath, that all of his assertions in his submissions before this Honorable Court have been and always will be based upon his personal knowledge, truthful and correct to the best of his information and belief as if submitted in an affidavit format. His assertions are also well supported and documented by the record and his cited authority.

The past eleven year history of this case has well established that the plaintiff is an honorable, truthful, and honest gentleman and farmer who respects and abides by the laws and is ever diligent to do his utmost to comply with all court rules, orders, and to be respectful. However, he is not a lawyer and cannot be expected to have such expertise. He is also blunt with the truth, the old school Scot that he is. On the other hand, the defendants have a long, sordid history of lying, cheating, stealing and flagrantly violating the laws, rules, and court orders – as repeatedly held by findings of fact and conclusions of law by the courts.

2. The defendants now try to misstate the holdings in the *Baker v. General Motors Corp.* case, 522 U.S. 222 (1998). While the Baker case holds that the local forums may "even handedly" use their local laws to enforce foreign judgments it prohibits those local laws from being misused and manipulated to defeat the enforcement of valid foreign

judgments which is compelled by superior constitutional full faith and credit authority:

> We are "aware of [no] considerations of local policy or law which could rightly be deemed to impair the full force and effect which the full faith and credit clause and the Act of Congress require to be given to [a money] judgment outside the state of its rendition." citing *Magnolia Petroleum Co. v. Hunt,* 320 U.S. 430, 438 (1943).

Baker also holds that the enforcing forum must exercise "even handed control of forum law." In this case the trial judge has violated *Baker* on both accounts. First, the trial judge manipulated the North Carolina "local laws/local policies," particularly misapplying N.C. Enforcement of Foreign Judgments Act, N.C.G.S. Chapter 1D, and the N.C. Rules of Civil Procedure, inconsistent with controlling case law authority presented in plaintiff's Memorandum, to arbitrarily defeat and defy the enforcement of plaintiff's valid foreign judgment and the plethora of controlling Constitutional Full Faith and Credit authority, cited by plaintiff, compelling its enforcement. Second, the trial judge's actions both at and after the hearing before him were hardly "evenhanded", in his refusal to properly consider plaintiff's Memorandum and comply with its plethora of pertinent, controlling authority and in his subsequent actions to sabotage plaintiff's appeal through his refusal to comply with Rule 11(c) and his Courtroom Clerk ploy setting up the plaintiff's appeal to be dismissed, as previously, factually, recounted by the facts and assertions in the plaintiff's previous submission. The plaintiff's assertions and recounting of the cold, hard facts may be ugly, as the truth often is, but they are accurate and factual and well supported by the record.

Whether or not that truth is "especially demeaning to a long serving Superior Court Judge," as the defendants Wades contend, is for the courts to decide. It is a sad fact that there are bad judges and bad lawyers just as there are good judges and good lawyers. The disbarred, corrupt Wades are examples of the bad North Carolina lawyers at their worst while the actions of the defendants' current lawyers have also, unfortunately, evidenced their dishonest, corrupt nature, as recounted by the facts and assertions in the plaintiff's previous submission.

3. The defendants response, at their page 3, also misstates the plaintiff's previous assertions: (1) the plaintiff did not assert that defendants' "had *ex parte* communications with Judge Gray" only that they occurred, and in fact they occurred with Judge Beal as previously argued by plaintiff before the Superior Court; (2) the plaintiff did not assert that "the Plaintiff/Appellant used the Clerk of Court to set up the *pro se* farmer to cause a violation of the rules." That is absurd, since it was the trial judge who used his Courtroom Clerk to directly contact the plaintiff to set up the ploy, as factually recounted in plaintiff's previous submission.

4. The defendants and their lawyers revile the plaintiff for using accurate description and characterization of them and their sordid deeds: "dishonest, corrupt, deceitful, sleazy." They forget that it was the venerable U.S. Federal District Court Judge Joseph Hood and his brethren Judges on the Sixth Circuit Court of Appeals that branded and characterized the defendants as "EVIL" as a matter of fact and law in their rulings. It takes a lot, and says a lot, to get federal judges to apply that brand knowing it will thereafter remain forever and a day under the law. However, those venerable judges recognized the

depraved, greedy, ruthless nature of these corrupt defendants and applied the appropriate characterization. The dishonest actions by the defendants' lawyers, as factually and accurately related in the plaintiff's previous submission, evidences their dishonest and corrupt nature. Dishonest is as dishonest does. Perhaps these lawyers have been polluted with the cancer of corruptness spread from their evil clients; regardless, their dishonesty has left them deserving of the scarlet letter they must wear henceforth.

Indeed, these evil defendants do represent the forces of evil against whom the righteous plaintiff has been waging a battle for the past eleven years. This battle is in the classic format of good against evil as the God fearing plaintiff champions the cause of justice. Notwithstanding, the plaintiff continues to pray for the corrupt defendants and their dishonest lawyers that they all may one day relent and repent of their wicked ways and seek forgiveness from the Almighty.

5. The defendants attempt to make light of the application of the *Boswell v. Mayer* case, 169 F3d 384 (6th Circ. 1999), which Judge Hood and the second highest Court in our Nation, applied to the plaintiff's case holding that the *pro se* plaintiff's submissions and filings are entitled to a "liberal construction" which is consistent with prior recognition by the U.S. Supreme Court that pro se litigants require the special consideration to insure them "fundamental fairness" pursuant to their constitutional protections. Thus, the highest and second highest Courts in our Nation have expressed concerns to protect the constitutional rights of *pro se* litigants who seek the justice they constitutionally deserve but under the severe handicap of proceeding without a lawyer they cannot afford, as

in this case where the ruthless defendants stole the plaintiff's money and caused him severe damages, ruined him financially, and left him deeply in debt, as noted in plaintiff's Memorandum at page 3.

Judge Gray defied and violated that *Boswell* doctrine and protections and he defied and defeated the will and intentions of the highest and second highest Courts in our Nation. That suited and pleased the evil defendants very well, who have been doing all possible throughout the past eleven years of arduous litigation to deprive the plaintiff of his right to justice, fundamental fairness, equal justice, and due process – which Judge Hood and the Sixth Circuit held as a matter of fact and law in their rulings supporting plaintiff's judgment. Now these evil defendants and their dishonest lawyers would have this Honorable Court also ignore, defy and defeat these *Boswell* constitutional protections and the precedent authority of our Nations highest and second highest Courts.

6. The plaintiff has presented substantial reason for this Honorable Court to do justice, to invoke Rule 2 or grant plaintiff's appeal or petition for discretionary review, or, in the alternative, to simply reinstate the appeal back before the Court of Appeals for adjudication of the merits. Indeed, this Honorable Court has great authority to act for the sake of justice, fundamental fairness, and to insure that plaintiff's constitutional rights are protected and to insure that the compelling constitutional full faith and credit authority supporting the enforcement of his valid foreign judgment is applied and complied with.

Thus, plaintiff continues to pray for relief as this Honorable Court shall deem proper, be it by granting review of his appeal, or for by granting discretionary

review, or by sending it back to the Court of Appeals pursuant to Rule 2 to be heard on its merits, or for such other relief as may be proper.

Respectfully submitted this 22nd day of July, 2004.

/s/ Paull Anderson
Paull Anderson, pro se
P.O. Box 16151
Bristol, Virginia 24209
(276) 466-5855

APPENDIX 10

Order of North Carolina Supreme Court dismissing Appeal and Petition for Discretionary Review dated 2 December 2004

No. 315P04 TWENTY-SIXTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

* * *

(Anderson v Wade, et al.)

PAULL ANDERSON

v

JULIUS JENNINGS WADE, JR.,
JAMES H. WADE,
MARGARET L. GODLEY, GODLEY, INC.,
and WADE AND WADE, ATTORNEYS AT LAW

From NC Court of Appeals
(COA04-715)
From Mecklenburg
(03CVS16356)

* * *

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by the Plaintiff on the 22nd day of June 2004 in this matter pursuant to G.S. 7A-30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the Defendants (Wades), the following order was entered and is hereby certified to the North Carolina Court of Appeals: the motion to dismiss the appeal is

"Allowed by order of the Court in conference, this the 2nd day of December 2004.

s/ Brady, J.
For the Court"

Upon consideration of the petition filed on the 22nd day of June 2004 by Plaintiff in this matter for discretionary review of the order of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 2nd day of December 2004.

s/ Brady, J.
For the Court"

APPENDIX 11

Letter from Clerk of North Carolina Supreme Court advising dismissal Order of Respondent Godley dated 15 December 2004

[SEAL]

SUPREME COURT OF NORTH CAROLINA
CHRISTIE SPEIR CAMERON, Clerk
Justice Building, 2 E. Morgan Street
Raleigh, N C 27601
(919) 733-3723 Mailing Address:
Fax: (919) 733-0105 P.O. Box 2170
Web: www.nccourts.org Raleigh, NC 27602

13 December 2004

Mr. William K. Diehl, Jr.
Attorney at Law
600 S. College Street[by E-Mail]
Charlotte, NC 28202

From NC Court of Appeal
(COA04-715)
From Mecklenburg
(03CVS16356)

Re: Anderson v Wade, et al. – No. 315P04

Dear Mr. Diehl:

The following order has been entered on the motion filed on the 6th day of July 2004 by Defendant (Godley) to Dismiss Appeal:

> **"Motion Allowed by order of the Court in conference this the 2nd day of December 2004.**
>
> **s/ Brady, J.**
> **For the Court"**

Very truly yours,

Christie Speir Cameron
Clerk of Supreme Court

/s/ Shaula A. Brannan
Shaula A. Brannan
Assistant Clerk

Copy to:
West Publishing (by E-Mail)
Lexis-Nexis (by E-Mail)
LOIS Law (by E-Mail)
Mr. Ralph A. White, Appellate Reporter (By E-Mail)
Mr. Paul Anderson, For Pro se
Mr. John S. Arrowood, Attorney at Law
Mr. Michael F. Schultze, Attorney at Law, For Wades, Wade and Wade
Mr. R. Gregory Tomchin, Attorney at Law, for Julius Wade, James Wade and Wade and Wade

APPENDIX 12

Order of North Carolina Court of Appeals allowing Dismissal of Appeal and denying Petition for Discretionary Review by North Carolina Supreme Court dated 20 December 2004

No: COA04-715 TWENTY-SIXTH DISTRICT

North Carolina Court of Appeals

* * *

PAULL ANDERSON, Plaintiff V JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC., and WADE AND WADE, ATTORNEYS AT LAW, Defendants	From Mecklenburg (030VS16356)

* * *

ORDER

The Motion to Dismiss the Appeal is Allowed and Petition for Discretionary Review to review the decision of the North Carolina Court of Appeals was denied by order of the North Carolina Supreme Court on the 2nd day of December 2004, and same has been certified to the North Carolina Court of Appeals;

IT IS THEREFORE CERTIFIED to the Clerk of Superior Court Mecklenburg County North Carolina that the North Carolina Supreme Court has allowed the Motion

to Dismiss the Appeal and denied the Petition for Discretionary Review filed by the Plaintiff in this cause.

WITNESS my hand and official seal this the 20th day of December 2004.

/s/ John H. Connell
John H. Connell
Clerk, North Carolina Court of Appeals

/s/ Kathy Taylor
Deputy Clerk, North Carolina Court of Appeals

Orig. to CSC
Copy to:
Mr. Paull Anderson, Pro Se, For Paull Anderson
Mr. Michael F. Schultze, Attorney at Law,
For Wade and Wade, et al
Mr. John S. Arrowood, Attorney at Law,
For Margaret L. Godley, et al
Mr. William K. Diehl

APPENDIX 13

Response by Respondents Wade to Petitioner's Petition for Writ of Certiorari to North Carolina Court of Appeals dated 20 January 2005

No. COA 04-715 TWENTY-SIXTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

PAULL ANDERSON, Plaintiff, vs. JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC. and WADE AND WADE, ATTORNEYS AT LAW, Defendants.	From Mecklenburg County No. 03-CVS-16356

* * *

I.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Now come the Defendants Julius Jennings Wade, Jr., James H. Wade and Wade and Wade, Attorneys at Law, through counsel and respond to Plaintiff's Petition for Writ of Certiorari to this Court pursuant to Rule 21 of the Rules of Appellate Procedure. This Petition was served on these Defendants by Plaintiff on January 10, 2005.

II.

This Petition is yet *another* attempt by Plaintiff seeking to enforce the same Kentucky Judgment in North Carolina (emphasis added).

Previous filings to enforce this Judgment and applicable history are set forth as follows:

(a) Plaintiff instituted his first action against all Defendants in Civil Action 00-CVS-18921 in the Mecklenburg County Superior Court.

(b) That case was heard by the Honorable Jesse B. Caldwell who denied the Motion to Enforce Foreign Judgment in an Order filed April 2, 2003.

(c) On April 3, 2003, Plaintiff filed a Motion for Relief pursuant to Rule 60(b) of the North Carolina Rules of Civil Procedure.

(d) Plaintiff filed a Notice of Appeal to this Court on May 1, 2003 of the Dismissal by Judge Caldwell.

(e) On May 28, 2003, the Trial Court denied Plaintiffs Rule 60(b) Motion.

(f) Plaintiff filed a second appeal of that case to this Court from the Order denying his Rule 60(b) Motion of May 28, 2003.

(g) Plaintiff instituted a second action identified as File No. 03-CVS-5490 (Mecklenburg County) on March 27, 2003 seeking to enforce this same judgment.

(h) On July 3, 2003, the Honorable Robert P. Johnston dismissed this second action as abated.

(i) Plaintiff filed a Notice of Appeal of Judge Johnston's Order dismissing this second action on July 17, 2003.

(j) Plaintiff withdrew his appeals from these Orders on September 22, 2003.

(k) Plaintiff instituted yet a third action to enforce this same judgment in 03-CVS-16356 (Mecklenburg County) on September 23, 2003.

(l) On December 12, 2003, the Honorable Marvin L. Gray after trial of the matter in Superior Court denied the enforcement of this same judgment pursuant to or under Article 17, G.S. 1C-1701, *et seq.*, finding as facts that Plaintiff failed to meet his burden under that statute, that he failed to comply with mandatory requirements of G.S. 1C-1701, in particular G.S. 1C-1703, and that he failed to comply with the North Carolina Rules of Civil Procedure and to enforce the judgment would be contrary to the public policies of the State of North Carolina and particularly Chapter 1D of the General Statutes of North Carolina.

(m) On December 31, 2003, Plaintiff gave Notice of Appeal in this third case.

(n) These Defendants and Defendant Margaret L. Godley filed Motions to Dismiss the Appeal in this Court on May 28, 2004.

(o) This Court entered an Order dismissing the Appeal of Plaintiff on June 11, 2004.

(p) Plaintiff gave Notice of Appeal to the North Carolina Supreme Court on June 22, 2004 pursuant to Appellate Rule 14(b)(2), G.S. 7A-30 based on an alleged violation or question arising under the Constitution of the United States or of this State.

(q) The Plaintiff also filed a Petition for Discretionary Review to the North Carolina Supreme Court on June 22, 2004 pursuant to Appellate Rule 15(d), G.S. 7A-31.

(r) These Defendants filed responses to the North Carolina Supreme Court as to the preceding Notice of Appeal and Petition for Discretionary Review on July 1, 2004.

(s) On July 3, 2004, the Plaintiff filed his Response with the North Carolina Supreme Court to Defendants' Motion to Dismiss Appeal and Opposition to Petition for Discretionary Review.

(t) On July 19, 2004, the Wade Defendants filed with the North Carolina Supreme Court their Response to the Plaintiff's preceding July 3, 2004 Response.

(u) On July 22, 2004, Plaintiff filed his Response to the Wade Defendants' Response to Plaintiff's Response to these Defendants' Motion to Dismiss Appeal and Opposition to Petition for Discretionary Review.

(v) On August 16, 2004, Plaintiff filed an Affidavit reciting the existence of the Judgment alleging that it was not filed as a foreign judgment under the North Carolina Uniform Enforcement of Foreign Judgments Act nor did it seek relief or enforcement but that it was " . . . in addition to other procedures provided by law for the enforcement of judgments pursuant to 28 U.S.C. Section 1963 . . . " and has the force and effect of a judgment of the Superior Court pursuant to G.S. 1-237. This filing is identified in the Office of the Clerk of Superior Court of Mecklenburg County as File No. 04-CVS-14623.

(w) On December 2, 2004, the North Carolina Supreme Court entered an Order to Dismiss Plaintiff's Notice of Appeal, allowed these Defendants' Motions, and denied Plaintiff's Petition for a discretionary review of the Order of the

North Carolina Court of Appeals pursuant to G.S. 7A-31.

(x) An Order of the North Carolina Court of Appeals was issued on December 20, 2004 certifying to the Clerk of Superior Court of Mecklenburg County that the North Carolina Supreme Court had allowed the Motion to Dismiss the Appeal and had denied the Petition for Discretionary Review as filed by the Plaintiff.

III.

This Petition.

The "law of this case" is clearly set forth and controlled by the ruling or rulings of the North Carolina Supreme Court, as well as this Court, based upon a review of items (a)-(x), *supra* which resulted in the entry of the Order of this Court dismissing the Appeal of Plaintiff on June 8, 2004 and certified to the Clerk of Superior Court of Mecklenburg County on June 11, 2004 and based upon the Order of the North Carolina Supreme Court on December 2, 2004 allowing or affirming the ruling of this Court, dismissing the Plaintiff's Appeal for lack of a substantial constitutional question and denying the Petition of the Plaintiff for a discretionary review of the Order of this Court pursuant to G.S. 7A-31 and simultaneously entering an Order allowing the Motion of the Defendant Godley to Dismiss the Appeal; and then the issuance of an Order of this Court on December 20, 2004 as certified to the Clerk of Superior Court of Mecklenburg County, certifying the Supreme Court's ruling as to the Motion to Dismiss the Appeal and denying the Petition For Discretionary Review of the Plaintiff.

The issuance of this extraordinary Writ of Certiorari is totally within the sound discretion of the Court to which the Writ or Petition is addressed. Rule 21 of the North Carolina Rules of Appellate Procedure provides that the writ " . . . may be issued in appropriate circumstances . . . to permit review of the judgments or order of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action, . . . " It is never allowed as a matter of right.

This case has already been dismissed by this Court's allowing the Motion to Dismiss the Plaintiff's Appeal for lack or absence of any substantial constitutional question as permitted under Rule 14(b)(2) and this Court has also denied the Petition for Discretionary Review as permitted under Rule 15. This Court's rulings in both instances has been affirmed by the North Carolina Supreme Court.

> "A proper consideration of the authorities' opposite is to the effect that as a substitute for appeal the writ does not issue as of right, but only in the sound discretion of the appellate court, to review an adverse judgment where no provision for appeal has been made by law or the right thereto has been lost or wrongfully refused *without default of the appellant* (emphasis added) and is allowed only on a reasonable show of merit and that the ends of justice will be thereby promoted. *King v. Taylor,* 188 NC 450 (1924). Also, "Appellants are entitled to a writ of certiorari only when the failure to perfect their appeal is due to some error or act of the court or its offices, and *not to any fault or neglect of theirs or that of their agent.*" (Emphasis added.) *Bank v. Parks,* 191 NC 263 (1926).

Plaintiff cites *McConnell v. Caldwell,* 51 NC 469 (1859) as authority of the Court to issue a writ of certiorari where fault on the part of the Court causes a loss of right

to appeal; however, the next sentence in the opinion is left out which plainly states that "this is put upon the ground that he has been deprived of his right, to wit, of an *appeal without his fault*." (Emphasis added.) Then, in *Collins v. Nail*, 14 NC 224 (1831), also cited by Plaintiff, the Court in like manner, in authorizing the writ of certiorari said: "This is upon the ground that the party has been deprived of a right to appeal without his fault . . . where indeed he loses his appeal by his own neglect or that of his agent, as if he does not pray an appeal when he could, and had reasonable time, nor bring up his appeal after obtaining it he is not helped, because he had an obvious and regular relief which it was his own folly to abandon."

The reasons which Plaintiff set forth in support of both the Notice of Appeal and the Petition for Discretionary Review are substantially identical to these reasons which he urges in support of this Petition for a Writ of Certiorari. Plaintiff also set forth in his previous filing reasons why this Court, as well as the North Carolina Supreme Court, should suspend the rules pursuant to Rule 2 of the North Carolina Rules of Appellate Procedure, to prevent manifest injustice to a party or to expedite decision in the public interest. This Court rightfully refused to do so then and there is nothing new in the filing of this Writ of Certiorari to support this now. He plainly and clearly neglected to follow the mandatory rules for appeals.

The record suggests that on the occasion of the settlement of the Record on Appeal the trial judge had retired and he, hence, was unavailable to certify the Record. In such a case, however, the Rules of Appellate Procedure provide in any or all of Rules 11, 25, 27 and 36, none of

which the Plaintiff chose to follow and any one of which, if followed, would have remedied the problem.

Instead he chose to cast blame or fault on the Defendants, the attorneys for the parties, and the Courts, with no credible evidence at all supporting such accusations, as for example:

(a) . . . the Defendants' lawyers initiated a "reprehensible ploy to corrupt, subvert and grossly misinterpret the lower courts' ruling and prejudice the appeal . . . " (P. p. 4).

(b) . . . "Defense counsel prepared a deceitful, dishonest proposed order . . . " (P. p. 5).

(c) . . . "The dishonest, deceitful, proposed order changed the language in the ruling . . . " (P. p. 6).

(d) . . . "the dishonest, deceitful, fabricated language to have plaintiff's action dismissed . . . " (P. p. 7).

(e) . . . "This reprehensible aspect of the ploy would have afforded the corrupt defendants a window to convey assets to defraud the plaintiff . . . " (P. p. 7).

(f) . . . "The record, . . . , clearly reflects that the improper conduct of Judge Gray . . . and in the misleading instructions to the plaintiff coning [sic] from his courtroom clerk, precipitated the late filing of the record . . . " (P. p. 14).

(g) . . . "Only Judge Gray's intentional violation of Rule 11 on two distinct occasions and the consequences of the explicit instructions from his courtroom clerk, all of which he was totally responsible for . . . " (P. p. 19).

(h) . . . "The *pro se* plaintiff's right to statutory appeal has been lost without his fault. Plaintiff deserves no blame . . . for the improper conduct of Judge Gray who intentionally violated Rule 11(c) . . . "" (P. p. 21).

(i) . . . "The improper conduct in the inferior court by the defense lawyers,. . . . contributed to Plaintiff's loss of opportunity to appeal . . . said improper conduct . . . resulted in . . . (b) the gross misrepresentation and corruption of Judge Gray's ruling resulting in a dishonest, deceptive, subverbal, fatally defective, unfair, suspect and prejudicial order . . . (d) the deception and defrauding of the appeals courts with the dishonest and deceptive order, (e) the sleazy manipulation of the home town judge and court, (f) the taking of unfair advantage of the honest and truthful pro se, farmer . . . " (P. p. 22, 23).

(j) . . . "The two distinct, dishonest, deceptive proposed orders clearly document . . . that the defense lawyers are brazenly dishonest and deceptive . . . "" (P. p. 24).

(k) . . . "Hopefully, the corrupt, dishonest defense lawyers' brazen efforts to deceive and defraud this Honorable Court of Appeals . . . will not go unstated . . . "" (P. p. 24).

(l) . . . "Allowing rogue lawyers like these to perpetuate said actions with impunity sets a dangerous precedent. Rather, such rogue lawyers should be cast from the practice of law in North Carolina . . . " (P. p. 24).

(m) . . . "This blatant, dishonest, deceitful conduct by the defense lawyers clearly exposes . . . their devious, dishonest, treacherous, ruthless, *mens rea* and reflects the same lack of integrity as their corrupt, evil clients . . . " (P. p. 27).

"Exhibit A" to the Plaintiff Anderson's Petition also includes similar described conduct of the Defendants and their counsel as set forth by Plaintiff Anderson.

For example, "The assertion and arguments of the Plaintiff; who is honest and truthful, can also be relied upon. On the other hand, the assertions and arguments of the corrupt Defendants, who lie, cheat, steal and have as shameful record of flagrantly violating and disrupting the laws, rules and court orders, merit no credibility whatsoever.

"It is now high time to hold these evil scoundrel, Defendants fully accountable to that authority and to the laws and the judgment of the Honorable Courts that these ruthless outlaws have so egregiously defied, disrespected and violated. (Exhibit A, P. p. 46).

Finally, the hearing before Judge Gray did not include the testimony of any witness and the only affidavit filed other than the filing affidavit of the Plaintiff was that of one of the Defendants. Julius Jennings Wade, Jr., appearing as "Exhibit A" at R p. 99, and is introduced to show in "capsule form" just what this basic case actually concerns, to wit; a 30 day option by the Defendant Margaret L. Godley for $15,000.00 to Plaintiff Anderson to purchase corporate stock of Godley, Inc. which owned acreage in Kentucky, which was not exercised by the Plaintiff; a judgment by default on liability based on disputed discovery violations; the denial of a jury trial; a trial before the appointed Magistrate as a non-jury trial, resulting in no damages awarded except the agreed upon return of the $15,000.00 plus a $1,000.00 agreed upon counsel fee; and a revision of the Magistrate's Recommendation by the District Judge who heard no evidence and who revised the

judgment to include the amount in the final record. Also, in any event there are clear defenses to the enforcement of this judgment as found by Judge Gray at the December 10, 2003 trial.

IV.

Conclusion

Respectfully, the Petition for this Writ should be denied for reasons set forth herein.

This 20th day of January, 2005.

CRANFORD, SCHULTZE AND
TOMCHIN, P.A.

By: /s/ Michael F. Schultze
Michael F. Schultze
Attorneys for Defendants
Julius Jennings Wade, Jr.,
James H. Wade
and Wade and Wade,
Attorneys at Law
2813 Coltsgate Road, Suite 200
Charlotte, NC 28211
(704) 442-1010
State Bar No.: 12547

APPENDIX 14

Respondent Godley's Response to Petitioner's Petition for Writ of Certiorari to North Carolina Court of Appeals dated 24 January 2005 (without attachment.)

NORTH CAROLINA COURT OF APPEALS

* * *

PAULL ANDERSON,	)
Plaintiff,	) **From Mecklenburg**
	) **County**
v.	) **Civil Action**
JULIUS JENNINGS WADE, JR., ET AL.	) **No. 03-CVS-16356**
	)
	)
Defendants.	)

* * *

DEFENDANT MARGARET L. GODLEY'S RESPONSE TO PLAINTIFF'S PETITION FOR WRIT OF CERTIORARI

* * *

TO: The Honorable Court of Appeals of North Carolina:

Defendant Margaret L. Godley respectfully requests this Court to deny Plaintiff's Petition for Writ of Certiorari pursuant to Rule 21 of the North Carolina Rules of Civil Procedure. In support of her request, Mrs. Godley shows the following:

FACTS

This is yet another attempt by the pro se Plaintiff to have a Kentucky Judgment enforced against the

Defendants. It is another in a long line of documents penned by Plaintiff that is filled with name calling invectives against Defendants' counsel because of their efforts to represent their clients. In order to fully understand the cause before this Court, a full history of the dealings in the North Carolina Courts should be set forth.

On December 6, 2000, Paull Anderson ("Anderson") instituted civil action, 00-CVS-18921 in Mecklenburg County Superior Court (Case 1), to enforce a judgment of the United States District Court for the Eastern District of Kentucky. Case 1 was heard by the Honorable Jesse B. Caldwell who denied Plaintiff's motion to enforce the foreign judgment in an Order filed on April 2, 2003. On April 3, 2003, Anderson filed a motion for relief pursuant to Rule 60(b) of the North Carolina Rules of Civil Procedure. On May 1, 2003, Anderson filed a Notice of Appeal to the North Carolina Court of Appeals in Case 1. On May 28, 2003, the Superior Court for Mecklenburg County ruled on Anderson's 60(b) motion and on June 13, 2003, Anderson filed a second appeal in Case 1, from that May 28, 2003 Order.

On March 27, 2003, while Case 1 was on appeal, Anderson instituted a second action, bearing Mecklenburg file number 03-CVS-5490, seeking to enforce the identical judgment (Case 2). On July 3, 2003, the Honorable Robert P. Johnston dismissed Case 2 as abated. On July 7, 2003, Anderson entered a Notice of Appeal to this Court in Case 2.

On September 22, 2003, Anderson voluntarily withdrew his appeals from the Orders entered in Cases 1 and 2. On September 23, 2003, he instituted Case 3 bearing Mecklenburg County file number 03-CVS-16356 again seeking to enforce the identical judgment.

On Deeember 10, 2003, the Honorable Marvin K. Gray heard Plaintiff's motion to enforce the judgment. From the bench he ruled against the Motion and directed Mrs. Godley's counsel to draft a proposed order. As set forth in the Petition's Exhibit B, counsel drafted a proposed order and served it on the other parties. What is missing from Anderson's Exhibit, however, is the exchange between counsel which led to the form of the final Order. In view of the fact of Anderson's accusations regarding the drafting of the Order, counsel has included herewith as Exhibit A to this Response, the correspondence to Judge Gray submitting the Order which includes as an attachment to it Anderson's response to the proposed order. A review of that response shows that Anderson indicated in an email response to counsel's letter that comprises Exhibit B to the Petition:

> I am in receipt of your proposed order to Judge Gray and would disagree with but one paragraph, being the fifth one on page 2 proposed to read that "Plaintiff's actions are hereby dismissed with prejudice, the clerk hereby ordered to cancel the foreign judgment, etc."

As detailed in Exhibit A hereto, upon receipt of that response from Anderson Mrs. Godley's counsel drafted an order consistent with his objection and submitted it to the trial court along with the original proposed order. Judge Gray signed the Order prepared in conformance with Anderson's objections! Therefore Anderson's contentions in his Petition, Paragraphs 8 through 10, are clearly disingenuous and designed to mislead this Court.

Anderson appealed, and as set forth in Mrs. Godley's June 1, 2004 motion to dismiss appeal (attached as Exhibit B hereto), failed to timely file his record in the North Carolina Court of Appeals and failed to seek an extension

of time to file it. Mrs. Godley's motion to dismiss the appeal was allowed by the Court on June 8, 2004.

Anderson then proceeded to give notice of appeal of this Court's dismissal to the Supreme Court of North Carolina and also petitioned the Supreme Court for discretionary review. Anderson's appeal was dismissed and the petition for discretionary review was denied by the Supreme Court in Orders dated December 2, 2004.

Anderson has now filed a petition for writ of certiorari to this Court seeking to review the, December 12, 2003 Order of Judge Gray.

REASONS WHY THE WRIT SHOULD BE DENIED

Rule 21(c) of the North Carolina Rules of Appellate Procedure, in pertinent part provides:

> The petition shall contain a statement of facts necessary to an understanding of the issues presented by the application; a statement of reasons why the writ should issue; and ***certified copies of the judgment, order of opinion or parts of the record which are essential to the understanding of the matters set forth***. (emphasis added)

Anderson has filed a document consisting of twenty-nine (29) pages of vilification of the trial court and of Defendants' counsel for doing their job. In clear violation of Rule 21, the Petition does not, however, contain a certified copy of Judge Gray's Order of which he seeks review. In fact, looking at the list of attachments, the Order is not provided even in uncertified form. In fact, the list of the attachments on page 28 of the Petition makes no mention of said Order and no Order is attached. Therefore the

Petition must be denied for failure to comply with the Rules.

Plaintiff has elected to proceed pro se in this dispute. As such, he is bound by the rules of this Court. His appeal was previously dismissed by the this Court for failure to follow the Rules. This Petition, once again flaunts the Rules and should be denied.

Rather than complying with the Rules, Anderson chooses to use this Petition as yet another opportunity to vilify the trial court and counsel. He has not provided sufficient justification for his failure to follow the timetable set forth in the Rules nor for his failure to seek additional time which this Court liberally grants.

This dispute between these parties in North Carolina has been going on in various actions for many years. It is time for it to end. Mrs. Godley respectfully asks you to put an end to this dispute by denying this Petition.

Respectfully submitted this 24th day of January, 2005.

JAMES, McELROY & DIEHL, P.A.

/s/ William K. Diehl, Jr.
William K. Diehl, Jr.
John S. Arrowood
600 South College Street
Charlotte, NC 28202
Telephone: (704) 372-9870
Attorneys for Defendant
Margaret L. Godley

APPENDIX 15

Order of North Carolina Court of Appeals denying Writ of Certiorari dated 27 January 2005

No. COAP05-51

North Carolina Court of Appeals

****

PAULL ANDERSON,
Plaintiff,

From Mecklenburg
(03CVS16356)

V

JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC., and WADE AND WADE, ATTORNEYS AT LAW,
Defendants.

****

ORDER

(Filed Jan. 27, 2005)

The following order was entered:

The petition filed in this cause on the 12th day of January 2005 and designated "Petition for Writ of Certiorari" is denied.

By order of the Court this the 27th day of January 2005.

The above order is therefore certified to the Clerk of Superior Court Mecklenburg County. Witness my hand and official seal this the 27th day of January 2005.

/s/ John H. Connell
John H. Connell
Clerk of North Carolina
Court of Appeals

CSC Orig
cc:
Mr. Paull Anderson
Mr. William K. Diehl, Jr.
Mr. John S. Arrowood
Mr. Michael F. Schultze

APPENDIX 16

Order of the North Carolina Supreme Court denying Petitioner's Petition for Writ of Certiorari dated 6 April 2005

No. 315PO4-2 TWENTY-SIXTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

(Anderson v Wade, et al)

PAULL ANDERSON

v

JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC., and WADE AND WADE, ATTORNEYS AT LAW

From NC Court of Appeals
(COA04-715)
(COAP05-51)
From Mecklenburg
(03CVS16356)

****

ORDER

Upon consideration of the petition filed by Plaintiff on the 16th day of February 2005 in this matter for a writ of certiorari to review the order of the Superior Court, Mecklenburg County, the following order was entered and is hereby certified to the Superior Court of that County:

"Dismissed by order of the Court in conference, this the 6th day of April 2005.

s/ Newby, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 11th day of April 2005.

Christie Speir Cameron
Clerk, Supreme Court of
North Carolina

/s/ Shaula A. Brannan
Shaula A. Brannan
Assistant Clerk

[SEAL]

Copy to:
North Carolina Court of Appeals
Mr. Ralph A. White, Appellate Reporter (By E-Mail)
Mr. Paull Anderson, Pro Se, For Paull Anderson
Mr. William K. Diehl, Jr., Attorney at Law, For
Margaret Godley & Godley, Inc. (by E-Mail)
Mr. John S. Arrowood, Attorney at Law, for Wade
Mr. Michael F. Schultze, Attorney at Law, For Wades
and Wade and Wade
West Publishing Company (By E-mail)
Lexis-Nexis (By E-mail)
LOIS Law (By E-mail)

APPENDIX 17

Respondents' Wade's Response to Petitioner's Petition for Writ of Certiorari to North Carolina Supreme Court 23 February 2005

No. COA 04-715 — TWENTY-SIXTH JUDICIAL DISTRICT

NORTH CAROLINA SUPREME COURT

PAULL ANDERSON, Plaintiff; vs. JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC. and WADE AND WADE, ATTORNEYS AT LAW, Defendants.	From Mecklenburg County No. 03-CVS-16356

****

(Filed Feb. 24, 2005)

I.

RESPONSE TO PETITION OF PLAINTIFF FOR WRIT OF CERTIORARI

Now come the Defendants Julius Jennings Wade, Jr., James H. Wade and Wade and Wade, Attorneys at Law, through counsel and file this Verified Response to Plaintiff's Petition for Writ of Certiorari to this Court pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure.

II.

This Petition is yet a further attempt by Plaintiff seeking to enforce this same Kentucky Judgment in North Carolina.

As set forth in previous filings to oppose the enforcement of this Judgment in North Carolina the applicable history of the Plaintiff's efforts is set forth as follows:

(a) Plaintiff instituted his first action against all Defendants in Civil Action 00-CVS-18921 in the Mecklenburg County Superior Court.

(b) That case was heard by the Honorable Jesse B. Caldwell who denied the Motion to Enforce Foreign Judgment in an Order filed April 2, 2003.

(c) On April 3, 2003, Plaintiff filed a Motion for Relief pursuant to Rule 60(b) of the North Carolina Rules of Civil Procedure.

(d) Plaintiff filed a Notice of Appeal to the North Carolina Court of Appeals on May 1, 2003 of the Dismissal by Judge Caldwell.

(e) On May 28, 2003, the Trial Court denied Plaintiff's Rule 60(b) Motion.

(f) Plaintiff filed a second appeal of that case to the North Carolina Court of Appeals from the Order denying his Rule 60(b) Motion of May 28, 2003.

(g) Plaintiff instituted a second action identified as File No. 03-CVS-5490 in the Mecklenburg County Superior Court on March 27. 2003 seeking to enforce this same judgment.

(h) On July 3, 2003, the Honorable Robert P. Johnston dismissed this second action as abated.

(i) Plaintiff filed a Notice of Appeal to the North Carolina Court of Appeals of Judge Johnston's Order dismissing this second action on July 17, 2003.

(j) Plaintiff withdrew his appeals from these Orders on September 22, 2003.

(k) Plaintiff instituted yet a third action to enforce this same judgment in 03-CVS-16356 in the Mecklenburg County Superior Court on September 23, 2003.

(l) On December 12, 2003, the Honorable Marvin L. Gray, after trial of the matter in the Superior Court, denied the enforcement of this same judgment, finding as facts that Plaintiff failed to meet his burden under Article 17, G.S. 1C-1701, et *seq.*, that he failed to comply with the mandatory requirements of that statute, and that he failed to comply with the North Carolina Rules of Civil Procedure and to enforce the judgment would be contrary to the public policies of the State of North Carolina and particularly Chapter ID of the General Statutes of North Carolina.

(m) On December 31, 2003, Plaintiff gave Notice of Appeal to the North Carolina Court of Appeals in this third case.

(n) These Defendants and Defendant Godley filed Motions to Dismiss this Appeal on May 28, 2004.

(o) The North Carolina Court of Appeals entered an Order dismissing the Appeal of Plaintiff on June 11, 2004.

(p) Plaintiff then gave Notice of Appeal to this Court on June 22, 2004 pursuant to Appellate Rule 14(b)(2), G.S. 7A-30 based on an alleged violation

or question arising under the Constitution of the United States or of this State.

(q) The Plaintiff also filed a Petition for Discretionary Review to this Court on June 22, 2004 pursuant to Appellate Rule 15(d), G.S. 7A-31.

(r) These Defendants filed responses to this Court as to the preceding Notice of Appeal and Petition for Discretionary Review on *July* 1, 2004.

(s) On July 3, 2004, the Plaintiff filed his Response with this Court to Defendants' Motion to Dismiss Appeal and Opposition to Petition for Discretionary Review.

(t) On July 19, 2004, these Defendants filed with this Court their Response to the Plaintiff's preceding July 3, 2004 Response.

(u) On July 22, 2004, Plaintiff filed his Response to these Defendants' Response to Plaintiff's Response to these Defendants' Motion to Dismiss Appeal and Opposition to Petition for Discretionary Review.

(v) On August 16, 2004, Plaintiff filed an Affidavit reciting the existence of the Judgment alleging that it was not then filed as a foreign judgment under the North Carolina Uniform Enforcement of Foreign Judgments Act nor did it seek relief or enforcement but that it was " . . . in addition to other procedures provided bylaw for the enforcement of judgments pursuant to 28 U.S.C. Section 1963 . . . " and had the force and effect of a judgment of the Superior Court pursuant to G. S. 1-237 This filing is identified in the Office of the Clerk of Superior Court of Mecklenburg County as File No. 04-CVS-14623; however, Plaintiff has since filed in the United States District Court.

Charlotte Division, North Carolina, yet an additional proceeding, to seek enforcement of this judgment pursuant to 28 U.S.C. Section 1963.

(w) On December 2, 2004, this Court entered an Order to Dismiss Plaintiffs Notice of Appeal, allowed these Defendants' Motions to Dismiss, and denied Plaintiff's Petition for a discretionary review of the Order of the North Carolina Court of Appeals pursuant to G. S. 7A-31.

(x) An Order of the North Carolina Court of Appeals was issued on December 20, 2004 certifying to the Clerk of Superior Court of Mecklenburg County that this Court had allowed the Motion to Dismiss the Appeal and had denied the Petition for Discretionary Review as filed by the Plaintiff; and on January 27, 2005, the North Carolina Court of Appeals issued an Order denying the Petition for Writ of Certiorari filed by Plaintiff on January 12, 2005.

(y) Then, the Plaintiff filed this Writ of Certiorari to this Court on February 14, 2005, seeking an order to the Superior Court of North Carolina to permit review of the previous orders of the North Carolina Court of Appeals and of this Court.

III.

This Petition.

The "law of this case" is clearly set forth and controlled by the ruling or rulings of this Court, as well as the North Carolina Court of Appeals, based upon a review of items (a)-(y), *supra* which resulted in the entry of the Order of the North Carolina Court of Appeals dismissing the Appeal of Plaintiff on June 8, 2004 and certified to the

Clerk of Superior Court of Mecklenburg County on June 11, 2004 and based upon the Order of this Court on December 2, 2004 allowing or affirming the ruling of the North Carolina Court of Appeals, dismissing the Plaintiff's Appeal for lack of a substantial constitutional question and denying the Petition of the Plaintiff for a discretionary review thereof pursuant to G.S. 7A-31 and simultaneously entering an Order allowing the Motion of the Defendant Godley to Dismiss the Appeal; and then the issuance of an Order of this Court on December 20, 2004 as certified to the Clerk of Superior Court of Mecklenburg County, certifying this Court's rulings as to the Motion to Dismiss the Appeal and denying the Petition for Discretionary Review of the Plaintiff.

IV.

The issuance of this extraordinary Writ of Certiorari is totally within the sound discretion of the Court to which the Writ or Petition is addressed. Rule 21 of the North Carolina Rules of Appellate Procedure provides that the writ " . . . may be issued in appropriate circumstances . . . to permit review of the judgments or order of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action, . . . " It is never allowed as a matter of right.

This case has already been dismissed by the North Carolina Court of Appeals which allowed the Motion to Dismiss the Plaintiff's Appeal for lack or absence of any substantial constitutional question as permitted under Rule 14(b)(2) and has also denied the Petition for Discretionary Review as permitted under Rule 15, as well as his

Petition for Writ of Certiorari. These rulings in all instances have been affirmed by this Court.

> "A proper consideration of the authorities' apposite is to the effect that as a substitute for appeal the writ does not issue as of right, but only in the sound discretion of the appellate court, to review an adverse judgment where no provision for appeal has been made by law or the right thereto has been lost or wrongfully refused *without default of the appellant* (emphasis added) and is allowed only on a reasonable show of merit and that the ends of justice will be thereby promoted" *King v. Taylor,* 188 NC 450, 451 (1924) Also, "Appellants are entitled to a writ of certiorari only when the failure to perfect their appeal is due to some error or act of the court or its officers, and *not to any fault or neglect of theirs or that of their agent.*" (Emphasis added.) *Bank v. Parks,* 191 NC 263, 265 (1926).

Plaintiff cites *McConnell v. Caldwell,* 51 NC 469, 470 (1859) as authority of the Court to issue a writ of certiorari where fault on the part of the Court causes a loss of right to appeal; however, Plaintiff omits the next sentence in that opinion which plainly states that " . . . This is put upon the ground that he has been deprived of his right, to wit, of an *appeal without his fault.*" (Emphasis added.) Then, in *Collins v. Nail,* 14 NC 224, 225-226 (1831), also cited by Plaintiff, the Court in like manner, in authorizing the writ of certiorari said: "This is upon the ground that the party has been deprived of a right to appeal without his fault . . . Where indeed he loses his appeal by his own neglect or that of his agent, as if he does not pray an appeal when he could, and had reasonable time, nor bring up his appeal after obtaining it, he is not helped, because he had an obvious and regular relief which it was his own

folly to abandon." Then, Plaintiff cites *Chazen v. Johnson*, 220 NC 432, 434 (1941) that the failure of the judge to settle this case on appeal " . . . is error" but disregards the next sentence that "A party is entitled to a writ of certiorari when, and only when, the failure to perfect the appeal is due to some error or act of the court or its officers, and not to any fault or neglect of the party or his agent."

The reasons which Plaintiff set forth in support of the Notice of Appeal, the Petition for Discretionary Review, and the Writ of Certiorari to the North Carolina Court of Appeals are substantially identical to these reasons which he urges in support of this Petition for a Writ of Certiorari to this Court. Plaintiff also set forth in his previous filing reasons why the North Carolina Court of Appeals, as well as this Court, should suspend the rules pursuant to Rule 2 of the North Carolina Rules of Appellate Procedure, to prevent manifest injustice to a party or to expedite decision in the public interest. The Court of Appeals and this Court rightfully refused to do so then and there is nothing new in the filing of this Writ of Certiorari to support this now. The Plaintiff plainly and clearly neglected to follow the mandatory rules for appeals and there is nothing new to support this Writ of Certiorari from the materials offered.

The record suggests that on the occasion of the settlement of the Record on Appeal the trial judge was unavailable to certify the Record and that it was not timely filed. In such cases, the Rules of Appellate Procedure provide ample relief, none of which the Plaintiff chose to follow and, if followed, would have remedied the problem.

V.

Instead he chose to cast blame or fault on these Defendants, the Defendant Godley, and the attorneys for the parties, and the Courts, with no credible evidence at all supporting such accusations, as for example, with respect to his Writ of Certiorari to the North Carolina Court of Appeals, that:

(a) . . . the Defendants' lawyers initiated a "reprehensible ploy to corrupt, subvert and grossly misinterpret the lower courts' ruling and prejudice the appeal . . . " (Petition, p. 4).

(b) . . . "Defense counsel prepared a deceitful, dishonest proposed order . . . " (Petition, p. 5).

(c) . . . "The dishonest, deceitful, proposed order changed the language in the ruling . . . " (Petition, p. 6).

(d) . . . "the dishonest, deceitful, fabricated language to have plaintiff's action dismissed . . . " (Petition, p. 7).

(e) . . . "This reprehensible aspect of the ploy would have afforded the corrupt defendants a window to convey assets to defraud the plaintiff . . . " (Petition, p. 7).

(f) . . . "The record, . . . , clearly reflects that the improper conduct of fudge *Gray* . . . and in the misleading instructions to the plaintiff coning [sic] from his courtroom clerk, precipitated the late filing of the record . . . " (Petition, p. 14).

(g) . . . "Only Judge Gray's intentional violation of Rule 11 on two distinct occasions and the consequences of the explicit instructions from his courtroom clerk, all of which he was totally responsible for . . . " (Petition, p. 19).

(h) . . . "The *pro se* plaintiff's right to statutory appeal has been lost without his fault. Plaintiff deserves no blame . . . for the improper conduct of Judge Gray who intentionally violated Rule 11 (c) . . . "" (Petition, p. 21).

(i) . . . "The improper conduct in the inferior court by the defense lawyers, . . . contributed to Plaintiffs loss of opportunity to appeal . . . said improper conduct . . . resulted in . . . (b) the gross misrepresentation and corruption of Judge Gray's ruling resulting in a dishonest, deceptive, subverbal, fatally defective, unfair, suspect and prejudicial order . . . (d) the deception and defrauding of the appeals courts with the dishonest and deceptive order, (e) the sleazy manipulation of the home town judge and court, (f) the taking of unfair advantage of the honest and truthful pro se, farmer . . . " (Petition, p. 22, 23)

(j) . . . "The two distinct, dishonest, deceptive proposed orders clearly document . . . that the defense lawyers are brazenly dishonest and deceptive . . . "" (Petition, p. 24).

(k) . . . "Hopefully, the corrupt, dishonest defense lawyers' brazen efforts to deceive and defraud this Honorable Court of Appeals . . . will not go unstated . . . "" (Petition, p. 24).

(l) . . . "Allowing rogue lawyers like these to perpetuate said actions with impunity sets a dangerous precedent. Rather, such rogue lawyers should be cast from the practice of law in North Carolina . . . (Petition, p. 24).

(m) . . . "This blatant, dishonest, deceitful conduct by the defense lawyers clearly exposes . . . their devious, dishonest, treacherous, ruthless, mens rea and reflects the

same lack of integrity as their corrupt, evil clients . . . " (Petition, p. 27).

"Exhibit A" to the Plaintiff Anderson's Petition also includes similar described conduct of the Defendants and their counsel as set forth by Plaintiff Anderson.

For example, "The assertion and arguments of the Plaintiff, who is honest and truthful, can also be relied upon. On the other hand, the assertions and arguments of the corrupt Defendants, who lie, cheat, steal and have as [sic] shameful record of flagrantly violating and disrupting the laws, rules and court orders, merit no credibility whatsoever.

"It is now high time to hold these evil scoundrel, Defendants fully accountable to that authority and to the laws and the judgment of the Honorable Courts that these ruthless outlaws have so egregiously defied, disrespected and violated. (Exhibit A, Petition, p. 46).

Finally, the hearing before Judge Gray did not include the testimony of any witness and the only affidavit filed other than the filing affidavit of the Plaintiff was that of one of the Defendants, Julius Jennings Wade, Jr., appearing as "Exhibit A" at R p. 99, and is introduced to show in "capsule form" just what this basic case actually concerns, to wit; a 30 day option by the Defendant Margaret L. Godley for $15,000.00 to Plaintiff Anderson to purchase corporate stock of Godley, Inc. which owned acreage in Kentucky, which was not exercised by the Plaintiff; a judgment by default on liability based on disputed discovery violations; the denial of a jury trial; a trial before the appointed Magistrate as a non jury trial, resulting in no damages awarded except the agreed upon return of the $15,000.00 plus a $1,000.00 agreed upon counsel fee and

no award of punitive damages; and then a revision of the Magistrate's Recommendation by the District Judge who heard no evidence and who revised the judgment to include the amount in the final record. Also, in any event there are clear defenses to the enforcement of this judgment as found by Judge Gray at the December 10, 2003 trial.

Then, in the filing by the Plaintiff of the Writ of Certiorari to this Court, Plaintiff chose to use that Petition as yet another opportunity, without any evidence whatsoever, to further vilify the attorneys, the Courts and the Defendants beyond his description as set forth in previous filings with the Court and with the North Carolina Court of Appeals, rather than to respond to his flagrant violations of the North Carolina Rules of Appellate Procedure, as for example:

(a)(a) . . . "Their shameful, dishonest, deceitful actions . . . . documented and exposed their corrupt, dishonest mindsets and their contemptible *mens rea* at that point in time" (December of 2003) and " . . . Their actions today, a year later, trying to cover up, rationalize, and lie and their reprehensible actions reflect their ongoing deceitful, dishonest natures that refuse to change, much less admit truth. It also reflects their cowardly natures that are afraid to face the truth and try to change their corrupt ways. Tragically, they are well along the path to emulating the incorrigible scoundrels they represent." . . . (Petition, p. 10.)

(b)(b) "Finally, it bears noting that their dishonesty and deceit stains the hands of all of the defense lawyers equally; they all must wear the scarlet letter as dishonest, deceitful, rogue lawyers . . . such rogue lawyers should not

be tolerated and they will be fully exposed to the world when *The Snake Handler* is published. (Petition, pps. 10, 11.)

(c)(c) " . . . Any whining accusation by the Defendants that Plaintiff is guilty of "vilification" are totally without merit. Plaintiff is an absolutely honest and truthful and honorable man that speaks the truth the way it is. The problem is that truth is ugly, but only so because the evil, corrupt Defendants and the dishonest, deceitful, corrupt lawyers have made it so. Their problem is they can't stand the truth and their ugly vilified image it mirrors back at them." (P., p. 27.)

(d)(d) " . . . The improper conduct in the inferior court by the defense lawyers . . . contributed to Plaintiffs loss of opportunity to appeal . . . Said improper conduct . . . resulted in the following: (b) . . . the gross misrepresentation and corruption of Judge Gray's ruling resulting in a dishonest, deceptive, subverted, fatally defective, unfair, unjust and highly prejudicial order, . . . (d) the deception and defrauding of the appeals courts with the dishonest and deceptive order; (e) the sleazy manipulation of the home town judge and court . . . " (P., p. 29.)

(e)(e) "Unfortunately," their dishonest, deceitful, corrupt defense lawyers and their career criminal clients . . . exemplify those lawyers described by The Honorable Chief Justice of the United States Supreme Court, Warren Burger, when he said "75 to 90 percent of American Trial Lawyers are incompetent, dishonest, or both . . . " (P., p. 31.)

VI.

In summary, as to this aspect of this Response, it appears that the Plaintiff's mode is to shoot the messenger rather than address the essentially indefensible failure on his part to address his failures to abide by the mandated Rules of Appellate Procedure in pursuing this appeal and face the consequences thereof.

VII.

As an aside, the Plaintiff has already filed his Writ of Certiorari to the North Carolina Court of Appeals which was then denied. He does not appeal from that discretionary denial but, instead, he is filing this Writ addressed, not to the denial by the North Carolina Court of Appeals, but directly seek a writ requesting a direct review of the Mecklenburg Superior Court's ruling which bypasses the previous denial by the North Carolina Court of Appeals. This does not appear to comport with Rule 21(a)(2) where this writ may be issued by this Court in appropriate circumstances to permit review of decisions and orders of the Court of Appeals when the right to prosecute an appeal of right or to petition for discretionary review has been lost by failure to take timely action, neither one of which latter circumstances appear.

VIII.

Conclusion

Respectfully, the Petition for this Writ should be denied for reasons set forth herein.

This 23rd day of February, 2005.

CRANFORD, SCHULTZE
AND TOMCHIN, P.A.

By: /s/ Michael F. Schultze
Michael F. Schultze
Attorneys for Defendants
Julius Jennings Wade, Jr.,
James H. Wade and Wade and
Wade, Attorneys at Law
2813 Coltsgate Road, Suite 200
Charlotte, NC 28211
(704) 442-1010
State Bar No.: 12547

VERIFICATION

Julius Jennings Wade, Jr., being first duly sworn, deposes and says that the matters and things set forth in this Verified Response are true to his best knowledge and belief and this verification is made in his behalf and in behalf of the Defendants Wade, all of whom are united in interest.

This 23 day of February, 2005.

/s/ Julius Jennings, Wade, Jr.
Julius Jennings Wade, Jr.

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Dianne F. Caldwell, a Notary Public of the County and State aforesaid, certify that Julius Jennings Wade, Jr., personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 23rd day of February, 2005.

/s/ Dianne F. Caldwell
Notary Public

My commission expires: 6-06-08

(Notarial Seal)

CERTIFICATE OF SERVICE AND FILING

The undersigned hereby certifies that on this date this paper was served upon the following parties by depositing a copy enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service as set forth below:

1. Paull Anderson
   P. O. Box 16151
   Bristol, VA 24209

   and

2. John S. Arrowood, Esq.
   James, McElroy & Diehl, P.A.
   600 South College Street
   Charlotte, NC 28202

A copy thereof was also filed with the Office of the Clerk, North Carolina Supreme Court, 2 East Morgan P. O. Box 2170, Raleigh, NC 27602-2170.

This the 23rd day of February, 2005.

CRANFORD, SCHULTZE
AND TOMCHIN, P.A.

By /s/ Michael F. Schultze
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Supreme Court, U.S.
FILED
AUG 19 2005
OFFICE OF THE CLERK

No.04-1732

IN THE

Supreme Court of the United States

PAULL ANDERSON,

Petitioner,

v.

JULIUS JENNINGS WADE, JR., JAMES H. WADE, MARGARET L. GODLEY, GODLEY, INC., AND WADE AND WADE, ATTORNEYS AT LAW,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NORTH CAROLINA MECKLENBURG COUNTY SUPERIOR COURT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

PAULL ANDERSON
P.O. Box 16151
Bristol, VA 24209
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Pro Se

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INTRODUCTION

Petitioner respectfully submits this Reply to Respondents' Briefs in Opposition to the Petition for a Writ of Certiorari, and regarding new issues raised within said Responses.

REPLY REGARDING THE STATEMENT OF THE CASE AND FACTS

Defendant Margaret L. Godley's Response does not dispute one word of the petitioner's Statement of the Case and Facts.

In contrast, the Wades' Response raises new issues of veracity and deceit, regarding their brash misrepresentations concerning the Statement of the Case and Facts. The Wades are thusly continuing, before this Honorable Court, the same deplorable practices they engaged in before the Kentucky and North Carolina courts and which Magistrate Judge Patterson, Federal District Judge Hood, and the venerable Sixth Circuit Judges soundly denounced and punished. Consequently, petitioner is now forced to confront this new issue of veracity and brash deceit to set the record straight and expose the deceit with the facts as supported by court records and the testimony of U.S. Attorneys Guy Blackwell, Robert A. Zauzmer, and Patrick L. Meehan, the F.B.I., and the *res judicata* findings of fact and conclusions of law by the venerable Judges on the Court of Appeals for the Sixth Circuit, by Federal District Court Judges Henry Wilhoit, Joseph M. Hood, Thomas G. Hull, Glen Williams and Stewart Dalzell, and by Federal Magistrate Judge Peggy Patterson.

The Wades' Response brazenly denies the existence of their interstate network of ruthless, notorious criminals and their roles as the controlling, kingpin operatives of their network, and they deny the long, ongoing pattern of RICO criminal activities by their network and the millions stolen

from their many hapless victims during the past two decades. However, court records and official documentation solidly refute their brazen lies and deceit, to wit:

1. Their interstate network consists of the controlling operatives, Margaret L. Godley and the Wades, and it includes, but is not limited to, former Kentucky State Senator/multi-convicted career criminal Howard N. Johnson, former U.S. Congressman/disbarred Philadelphia lawyer/multi-convicted career criminal Edward M. Mezvinsky, former F.B.I. Special Agent/convicted criminal William P. Campbell, Jr., real estate mogul/convicted criminal Robert Krilich, convicted criminal Hugh R. Rakes, and convicted criminal Mary B. Brady. The extensive illegal activities of the respondents and their interstate network of criminal cronies have been well documented by court records and news reports included in the N.C. case record.

Federal District Court Judges Wilhoit, Hood, Williams, Hull and Dalzell have exposed, strongly condemned, and harshly punished the evil respondents' interstate network of ruthless career criminals.

2. Their long and ongoing RICO activities and victims include, but are not limited to, the following: in the 1980's Ronald Manning of Kentucky and his two business associates were scammed out of millions of dollars by Godley and the Wades using Godley's bogus title; in the 1990's the victims included Dr. Walter Harber of Tennessee who was set up to lose $3 million, the petitioner's money was stolen through the same fraud, John Wolcott of Texas was scammed out of $50,000. through bogus options, the bogus title was then sold through their scam Indian Foundation bringing Godley and the Wades $3 million in cash and another $3 million in phony tax deductions which Godley used to scam the IRS, in 1995 they peddled their worthless title to the Wolford brothers of Kentucky for $28 million, and in 1999 the bogus title was peddled to Dr. William McKnight of Texas for $28 million.

U.S. Attorney Zauzmer and the F.B.I. have fully documented how, during the past 15 years of criminal activities of the respondents' interstate network, the respondents' Philadelphia crony, Edward M. Mezvinsky, alone, looted some $13 million and how, in 2001, Mezvinsky brazenly perpetrated his frauds from the New York office of his close friend and bunkmate, U.S. Senator Hillary Rodham Clinton.

Similarly, Federal District Court Judges Glen Williams and Thomas G. Hull and U.S. Attorney Blackwell have soundly denounced and exposed the network's vast fraud and criminal activities in Virginia, Tennessee, Kentucky, Pennsylvania, New York, North Carolina, etc.

3. The explicit, *res judicata* rulings and findings of fact and conclusions of law by Magistrate Judge Patterson, Judge Hood, and the venerable Sixth Circuit Judges also solidly refute and expose the Wades brash deceit before this Honorable Court, to wit:

Contrary to the Wades' contention, in his Kentucky case default judgment Judge Hood strongly denounced the respondents':

> "reprehensible behavior, bad faith, mockery of the discovery process, contumacious misconduct, abuse of the Rules, refusals to respect and comply with repeated orders of the Court and after unsuccessful lesser sanctions...their counsel, Mr. Burrus, moved to withdraw because their misconduct got so bad...The Court finds it unbelievable that the defendants argue that they should be spared sanctions because they had problems with their counsel. It was the defendants open defiance of Court orders and basic discovery procedures that caused their problems with counsel. The Court would analogize this to the story about the boy who killed his parents and then pleaded for mercy because he was an

> orphan...It should be further noted that Anderson and the Court would have liked to have gotten to the merits of this case, but it was the defendants who prevented this from happening."

When the brash, disrespectful respondents denigrated the integrity and competence of federal judges, Judge Hood sternly admonished them stating:

> "this Court is presided over by a Judge who has occupied the federal bench since 1976. Over the last 24 years, while serving as a Magistrate Judge and as a Federal District Court Judge, I have understood the importance of the Federal Rules of Evidence and have faithfully adhered to them...this Court reviewed and considered the entire record in this case...only admissible evidence was utilized in reaching the merits of this case."

Judge Hood's judgment ruling particularly noted the respondents':

> "outrageous conduct evidencing fraud, evil intent, and consistent actions in reckless indifference to the rights of others...flagrantly violated discovery orders in an attempt to prevent Plaintiff's recovery in this case...extensive evidence that the defendants continued to attempt to peddle their worthless title to the land after their encounter with the plaintiff...their actions evidence an evil motive."

4. The Wades' Response is the obvious handiwork of the elder Wade, submitted above the signature of his current lawyer, in but the latest of his ongoing futile attempts to falsely portray himself as an honorable, truthful lawyer; however, the court records and facts accurately expose the Wades as ruthless, greedy, career criminals who exploited their law licenses and dishonored the legal

profession while maintaining façades of respectability to deceive their community and church. Those court records document the Wades long criminal career of illegal acts and criminal convictions for numerous charges of stealing vast sums from their clients' trust accounts, lying under oath, subornation of perjury, etc. These scoundrel, disbarred lawyers have absolutely no sense of honor, integrity, decency or respect for our laws, court rules, and court orders and there is no chance that they will ever regain the law licenses they were stripped of 10 years ago.

The Wades epitomize those rogue lawyers recently described by the Honorable Chief Justice Warren Burger when he said that "75 to 90 percent of American Trial Lawyers are incompetent, dishonest or both." However, the description must also apply to the respondents' current lawyers whose dishonest and deceitful proposed orders ploy exposed their dishonest, deceitful, lack of integrity and honor. Their despicable proposed orders ploy was intended to and resulted in the (1) corruption and subversion of the ruling of the trial judge, (2) defiling and pollution of the appeal process and denial of a fair appeal for petitioner, (3) deception and defrauding of the N.C. appeals courts, (4) further compounding of the actions of their clients to defraud the petitioner, (5) defiance, obstruction, defeat and offending of the controlling authority of this Court and the U.S. Constitution compelling the enforcement of the valid federal judgment, and (6) the deprivation of the *pro se* petitioner's constitutional rights to equal justice, due process, and fundamental fairness. Dishonest and deceitful is as dishonest and deceitful does. No honest, honorable, respectable lawyer would engage in such underhanded, deplorable actions as have these sleazy, disreputable, Charlotte lawyers throughout the North Carolina litigation. Such dishonest, deceitful, scoundrel lawyers as these and the Wades pollute the honest, honorable lawyers and the legal profession; such rotten apples are best cast from the barrel.

The Wades' Response similarly attempts to raise a new issue and attach respectability and honesty to their crony and cohort-in-crime, Margaret Godley, by calling her a "defenseless lady;" however, the term hardly applies to such an evil, greedy, conniving, career crook who ruthlessly victimized many out of millions of dollars year after year - all the while sitting in the amen corner of her church each Sunday.

5. The Wades' Response also continues their long standing practice of denigrating the messenger for the harsh and accurate nature of his message. Although their Response acknowledges the "honest and truthful old Scotsman" character of the *pro se* farmer petitioner, they caustically criticize the accuracy of his descriptions because his words reflect the ugly, repugnant truth and facts of the respondents' despicable actions. However, as Judge Hood emphatically held, "these evil defendants have only themselves to blame" for the ugly natures of their vile acts and wicked ways which are indeed ugly and repugnant – but only because the evil respondents have made them ugly and repugnant.

These totally corrupt, evil, mean spirited respondents have never been able to handle the truth or face the ugly and reprehensible images that mirror what and who they really are – as a matter of fact and as a matter of law.

6. The Wades' Response contains a thick appendix of their self-serving briefs, etc. before the lower courts but not one of the petitioner's submissions or the rulings countering and exposing their deceitful arguments and brazen lies. The physically handicapped petitioner's meager social security income, and that of his 81 year old invalid wife, cannot afford the costs of a thick appendix to counter the lies and deceit with the necessary rulings, submissions, and documentation. The corrupt, wealthy respondents have the millions of dollars they have stolen and amassed through their many years of frauds and illegal actions that allows them to hire stables of big time, ultra

expensive, big city law firms to use sleazy, dishonest, deceitful practices to defeat justice.

If this Court issues its Writ of Certiorari then the record will come up from the North Carolina courts, which also includes the documentation from the Kentucky Federal Court Judges and the Sixth Circuit Court Judges, fully supporting the honest and truthful petitioner while revealing and exposing the bold faced lies and deceit of the corrupt respondents and the dishonest, deceitful actions of their sleazy lawyers.

REPLY REGARDING REASONS FOR GRANTING THE WRIT

It appears that the only substantive, relevant new legal issues the Responses raise concerns whether this Court has jurisdiction to grant the petition, whether the issues before this Court were placed before the North Carolina appeals courts, whether those courts had an opportunity to review those issues, and whether those courts then effectively upheld the rulings of the trial court by not exercising their discretionary authority to review and adjudicate those issues.

United States Supreme Court Rules 10, 16 and 28 USC Section 1257 vest jurisdiction, discretion, and authority in this Honorable Court to do justice and issue the requested writ of certiorari in this highly unusual case.

The issues brought before this Court were first raised before the trial court and then both the N.C. Court of Appeals and N.C. Supreme Court. Petitioner sought relief from both appeals courts, through the direct appeal avenue, of the trial judge's ruling and order, and then through the appeals courts' discretionary powers, under their Rule 2, N.C. Rules of Appellate Procedure. Petitioner fully documented all the issues before the appeals courts; he submitted a copy of his Memorandum which documented all of the controlling law compelling the enforcement of his valid final federal judgment; he submitted an Affidavit, (Appendix, page 28a),

documenting the egregiously unjust, improper, and highly prejudicial actions of the trial judge both at and after the hearing which resulted in the loss of petitioner's direct appeal and a manifest injustice; the respondents have never disputed that Affidavit. Unfortunately, the N.C. appeals courts chose neither to use their authority nor to exercise their discretion, under their Rule 2, etc. to do justice and uphold the rulings of this Court and the U.S. Constitution compelling the enforcement of the valid judgment. Those N.C. appeals courts thereby effectively condoned and upheld the trial court's actions while denying petitioner justice and failing to comply with the compelling, controlling authority of this Court and the Constitution.

The Wades' Response misapplies the *Baker* case. *Baker v. General Motors Corp.*, 522 U.S. 222, 232 (1998) While *Baker* provides that a state may use its local laws and policies as vehicles to properly and conveniently enforce a valid foreign judgment, it expressly prohibits that state from misapplying those local laws and policies to defeat and obstruct the enforcement of a valid foreign judgment, as the North Carolina courts have done in this case inconsistent with *Baker*. The other cases cited by the Wades also do not support their contentions and/or are inconsistent with the relevant, controlling case law authority.

The Godley Response cites but misapplies the *Hammerstein* case. *Hammerstein v. Superior Court of California*, 71 S.Ct. 820 (1951). The *Hammerstein* case is not at all on point with the instant case. *Hammerstein* did not involve a *pro se* litigant petitioner as in the instant case where the petitioner was entitled to a "liberal construction of his pleadings and filings," pursuant to *Boswell v. Mayer*, 169 F.3d 384, 387(6th Cir. 1999), which he was denied by the N.C. trial court and appeals courts. *Hammerstein* "could have obtained review of the final adjudication of the merits by appealing from the default judgment," *Id.*, at 821, 71 S.Ct. 820, but simply made no effort to pursue the effort before his appeals courts whereas your *pro se* petitioner made repeated,

diligent efforts before the N.C. appeals courts seeking review of the merits and the actions and ruling of the trial court and placed before those appeals courts all of the issues raised before the trial court and this Court. (Appendix A, pages 14a – 26a). *Hammerstein* was not victimized by the improper, unjust, and highly prejudicial actions of a trial judge that intentionally, repeatedly, violated the rules of appellate procedure and engaged in a pattern of improper, flagrantly unjust and biased actions that sabotaged and resulted in the *pro se* litigant's loss of his direct appeal, as in the instant case. (Appendix, pages 14a - 19a). *Hammerstein*'s federal Constitutional rights were not flagrantly trampled, and the controlling authority of this Court defied, as in the instant case. Finally, the N.C. appeals courts had the discretionary authority, under their rules, to grant the relief your petitioner sought from them, which was not a possibility in the *Hammerstein* case because he did not pursue his appeal.

Under the highly unusual circumstances of this case, at a minimum the decision of the trial court, rather than the order of the highest court refusing discretionary review, should suffice as the judgment of the "highest court of a State in which a decision could be had" for purposes of the 28 USC Section 1257 jurisdictional statute. The bona fide actions and diligent efforts of the *pro se*, farmer, petitioner to find justice, to comply with the N.C. Rules of Appellate procedure, to comply with the specific instructions of the trial judge coming through his courtroom clerk, and to appeal the unjust rulings and improper actions of the trial judge before the N.C. appeals courts and the subsequent denial of discretionary review and relief by those appeals courts should meet the threshold requirements of the letter and spirit of the 28 USC Section 1257 jurisdictional requirement.

"[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." *Bell v. Hood*, 66 S.Ct. 773, 778 (1946). Petitioner's constitutional rights, the Full Faith and Credit